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INTRODUCTION

It is a curious fact that there is as yet no big book about the League of Nations. The fact is the more curious in that, not only is the subject by this time so vast and complex as to merit extended treatment, but it forms an essential element in the teaching of international law and relations, to which ever greater attention is being paid since the war.

A growing number of universities in America, Great Britain and on the Continent are badly in need of a study of the League of Nations sufficiently wide in scope and thorough in detail to serve as a text-book, and there is a growing body of intelligent opinion that wants something more than elementary descriptions of the League, brief chronological records of its achievements or generalities about its virtues.

This book is meant to fill the need, and appeal to the public thus described. It purports to be a big book about the League, being a full account of its origin, structure, working and record, together with a careful examination of its position and possibilities in the world, the forces at work inside and outside the League to-day, and what may be achieved and ought to be attempted in future.

Obviously, these are ambitious ends, and obviously as nothing of the kind has yet been done on the League this book is defective, both as regards substance and arrangement, and must be revised and improved if it runs to further editions.

The present volume is planned as the first of a series of three. Each volume is an independent unit, but the three together will form a connected whole describing the evolution from international anarchy to world polity.

Volume I., *The Origin, Structure, and Working of the League of Nations*, deals exhaustively, as the title indicates and as will be seen from the table of contents, with the origin, structure, and working of the League (including the International Labour Organization and the Permanent Court).

Volume II., *The League of Nations: Its Record and Possibilities*, treats as fully the achievements and failures of the League and the lines of development they indicate. Among the subjects dealt with are the post-war salvage work and humanitarian activities of the League; the record of the International Labour Organization;

World Public Health ; Transit and Communications ; Financial Stabilization and Economic Reconstruction ; National Minorities ; Protection of Backward Peoples ; Quarrels dealt with through the League. The burning topics of the peaceful settlement of disputes and security and disarmament are carefully examined and some tentative conclusions suggested.

Volume III., *Toward World Polity : A Survey and a Forecast*, reviews the world to-day in the light of the policies and tendencies for which the League stands, beginning with the consideration of the international position of the British Empire and the main lines of British foreign policy, going on to an examination of the problem of Europe, which is treated as still, though to a decreasing extent, the world's political centre of gravity ; thence to the evolution of post-revolutionary Russia in its international aspect, the United States and Latin America, Asia and Africa, and finally, public opinion in relation to war and peace, the nature of war in the future, and the possibility of a World Society.

The present volume has taken something like three years to write, and although the material has been gathered, some chapters written and the rest planned for Volumes II. and III., it would be rash to fix any date for their appearance.

In writing a book of this sort the printed word is of course the main source, and, as the bibliography and references throughout the text will show, the available literature has been consulted, in official reports and minutes, in books and in ephemeral writings, such as newspapers, reviews and pamphlets. I owe a particular debt of gratitude to the full information and excellent leaders of the *Journal de Genève*, which, next to *The Monthly Summary* published by the Information Section of the League Secretariat, is the best means of keeping in touch with current events at Geneva.

But literature about the League, vast as it already is, is only in its infancy, and most of it out of date as soon as written. A great deal in this book is therefore founded on direct observation or contact with the people actually doing the work, and indeed the one qualification that emboldened me to attempt this task was that I have attended a good many meetings of the Assembly, the Council and the more important League Committees and Conferences, have first-hand knowledge, based on residence, of the chief countries' members of the League, as well as the United States and Russia, and can get on fairly comfortably in several languages. I wish also to say how exceedingly grateful I am to my

friends in the Secretariat and Labour Office for the time and trouble they have taken on my instruction and the verification of statements of fact, and hasten to add, by way of making what slight amends I may, that they are in no way responsible for any of the views expressed.

I thank my friend Philip Baker for his invaluable advice and encouragement. Finally, I owe more than I can express to Roth Williams, without whose constant aid it is no exaggeration to say this book would never have been written.

As those who write on the League are sometimes referred to as " passionate believers in the League," rather in the tone of one indicating an amiable though slightly discreditable weakness, it seems necessary to say a word about the point of view from which this book was written. Horror of the last war and the belief that another world war might make an end to most of what at present appears valuable in Western civilization has led to the idea of deliberately organizing the world for peace, as the avowed policy of civilized nations whether or not members of the League. About the methods there is still disagreement, although less so than might be suspected, and there is little agreement on the pace and sincerity with which the final aim is being pursued. But on the nature of this aim there is well-nigh unanimous agreement. The idea that war is a normal and necessary part of civilization has been repudiated by practically every government, and the overwhelming majority of public opinion, and the idea of so shaping human society as to eliminate war now appears not only reasonable but essential.

But to anyone who reflects it becomes fairly clear that peace is not to be had by aiming at it directly, by conceiving of it as merely the absence of war. War is a hideous and self-destructive attempt to do things that we will have to do by other and civilized means. War is the terrible symptom of evils which we must tackle. War is an institution that has outlived whatever usefulness it may have had, and become an evil so deadly as to menace the very existence of civilized society ; it must be replaced by other institutions. War is a vast breakdown, a consequence of the failure to adjust society to the realities in which we have our being. We must make the adjustment—we must make a world society morally and politically, for we are already living in a world society materially.

From this point of view the League appears as a more or less direct and successful attempt to begin building a world society, a stepping-stone to better things. The accomplished fact is already

so great, in the growth and achievements of the League, the extent to which international treaties and arrangements postulate its existence, and through the commitments to it of governments and public opinion, that any serious attempt to organize peace from any quarter, whether by the so-called outlawry of war, through social and political changes within states, or by any other method, must be correlated with the Covenant and the international system to which it has given rise. But the League is not, of course, an end in itself. It is merely the germ of a number of new institutions and methods for achieving the end.

When pursuing real ends in a real world it is essential to be accurate and painstaking over facts. To be of any use a text-book must, in its presentation of facts, be, like Cæsar's wife, above suspicion. Therefore everything possible has been done in this book to get the facts that bear on the subject stated coherently and correctly.

But it is mere superstition to look upon social and institutional facts " impartially," in the sense of trying to abstract the element of human will and purpose and treating them like astronomic phenomena, over which we have no control and in which our interest is purely scientific. By all means let us adopt whatever technique proves the most effective for acquiring a thorough mastery of the subject. But let us never forget that social and institutional facts are man-made, and that we master them not in order to admire their beauty as things-in-themselves, but primarily so as to do what we want with them ! Medical handbooks have to be scrupulously accurate in their anatomy and physiology. But they are written by people and for people who believe that, through medicine and surgery, we can and should heal the sick. This book is conceived as an essay in applied sociology, as a monograph on the obstetrics of the womb of time.

C. Howard-Ellis.

6 Quai des Eaux Vives,
Geneva, *May* 1928.

SECTION I

THE WORLD WAR AND THE DAWN OF PEACE

[The purpose of the four chapters in this Section is to trace the forces that brought about the world war, show the chief effects of the war on international relations, describe how the League was born of a mingling of pre-war forces with post-war circumstances, and indicate why the League received the form given it in the Covenant.]

CHAPTER I

INTERNATIONAL ANARCHY AND ITS FRUITS

"States armed, and therefore a menace to one another; policies ostensibly defensive, but really just as much offensive; these policies pursued in the dark by a very few men who, because they act secretly, cannot act honestly; and this whole complex playing upon primitive passions, arousable at any moment by appropriate appeals from a Press which has no object except to make money out of the weaknesses of men—that is the real situation of the world under the conditions of the international anarchy. These conditions are commonly regarded as unalterable. Hence the view that war is a fate from which we cannot escape. . . . Those who hold this philosophy also devote their lives to making sure that it shall come true; for it is impossible to hold any view about life without thereby contributing to its realization. . . . The same philosophy should conclude that civil war also is an eternal fact, a conclusion to which militarists are usually very much averse. But this much is certainly true, that until men lay down their arms, and accept the method of peaceable decisions of their disputes, war can never cease. I believe it also to be self-evident that war in future cannot be waged without destroying civilization. While, therefore, there is any possibility left of converting men to humanity by showing them whither the path leads on which their feet are set, that effort ought to be made. I am not optimistic about the fate of my own contribution. But it is made honestly, and may, perhaps, be one milestone on the narrow road that leads to salvation."—G. Lowes Dickinson.

The Rise of Science

Science—organized and cumulative knowledge—is the one new thing under the sun. Although still in its infancy it has in two centuries done more to revolutionize man's way of life and attitude to the universe than all previous history. Moreover, the rate of change is increasing and the next fifty years will probably see changes far outstripping even what has been done in the last two hundred. The first effect of the application of science to man's struggle for existence has been to multiply the population of the earth, and through the invention of the telegraph, telephone, railway, steamship and cheap printing to shrink the globe to a fraction of its former span. A further effect of this has been that mankind is culturally and economically becoming one interdependent society, in which injuries done to one member have repercussions felt more or less severely by all the rest. A third effect is that the material basis of our civilization has been growing and altering more quickly than the superstructure of habits and beliefs could be adapted to fit. The nineteenth century was essentially an age of emancipation, clearing the ground from the restraints of the old civilization in a haphazard manner that produced many misfits and much disorder.

International Relations

The extent to which material development has outrun social and political organization, and the moral and religious ideas at their root, is most strikingly illustrated in the field of international relations. In the last one hundred and fifty years most states have evolved from absolute monarchy based on dynastic rights to parliamentary government based on universal suffrage and freedom of Press, speech and public meeting. At the same time, dynastic considerations have been ousted as the goal of policy by an at least ostensible devotion to the welfare of the people: political parties within a modern state differ among themselves as to means, but all profess the same end—the good of the community as a whole. On the other hand, foreign affairs in 1914 were still conducted well-nigh as secretly and autocratically as in the days of divine-right monarchies, and conducted on the same twofold assumption: first, that the object of policy is "the superior interests of the state" [*raison d'état*]—bearing only a remote relation to the welfare of the nation—and, second, that states are rival entities whose interests conflict, and which can prosper only at each other's expense. These anachronisms were largely the result of tribal jealousies worked up into the complex sentiment of modern nationalism and in turn strengthening and vindicating that sentiment.

Nationalism and State Sovereignty

Nationalism as we know it and the theory of state sovereignty are part of a comparatively modern tradition dating from the Renaissance and Reformation, and confirmed by the French Revolution. Mediæval civilization was animated by a tradition of universality taken over from the Roman Empire and sustained by the Church. But the old order hardened into theocracy and absolutism and resulted in intolerable oppression and corruption. Because efforts at freedom to develop were resisted they resulted in secessions—the intellectual secession of the Renaissance, the religious secession of the Reformation and, finally, the series of political secessions inspired by the French Revolution. The Holy Roman Empire, which had never been a reality, ceased even to be an ideal, and in its place arose the ideas of national sovereignty and Machiavellian statecraft. The rise of the idea of state sovereignty meant a freeing of men's minds from the shackles of mediævalism. The rise of nationalism has been partly a revolt against absolutism, partly the liberation of conquered peoples that had become oppressed classes, and so

meant a shifting of the balance of power within the state from the aristocracy to the middle class, with all that that means in the modernization of human institutions and ideas. But sovereignty and nationalism have also obscured the age-old idea of human unity and given rise to many new tyrannies and superstitions.

Nineteenth-Century Industrial Development, Empires and Alliances

During the nineteenth century the combination of anarchic nationalism and haphazard material development led to the formation or consolidation of a few great empires, to their division into rival groups and, finally, to the world war. The advance of science caused industry to develop beyond national frontiers. The persistence of the old traditions of sovereignty and nationalism forced this development into channels of colonial conquest, imperialism, the formation of hostile military alliances, the race in armaments, and so to the increasingly terrible wars these things made inevitable.

This was the dominant trend and the outcome towards which the main currents of thought set with irresistible strength. The traditions and beliefs in which the minds of practically all the people who counted in nearly all countries were steeped, produced the result for which they had prepared, since human beliefs form such a large part of ourselves and our environment, the supposedly immutable "nature" and "reality" in which we live.

International Conferences and Machinery

But there were cross-currents and contradictory developments under the surface. The development of industry and improvement of transport and communications multiplied the points of contact between nations, and gave them many common interests and necessities. Consequently statesmen found it both easier and more frequently desirable than in the past to meet, and "since 1843, from decade to decade the number of international conferences regularly doubled (9, 20, 77, 169, 309, 510, 1070), until in the first four years of the decade beginning with 1910 it reached a total of 494." [1] Since the war hardly a day passes without one

[1] From *The League of Nations Starts*, chap. xiii., published in 1920. The authority quoted is M. A. Lafontaine, President of the Union of International Associations at Brussels. It is not clear what criterion was used in determining whether or not a meeting was an international conference—a matter not so simple as might appear—but as presumably the criterion used was the same throughout, this is not important.

or two international conferences of sufficient importance to be reported in the world Press.[1]

With the increase in the number of conferences came a further development in the form of differentiation of conferences according to the purpose for which they were held. Thus there were political conferences for settling terms of peace, or averting a threat of war, or restoring order where a violent disturbance of the *status quo* was threatened; juridical conferences to devise machinery for the settlement of justiciable disputes such as The Hague Peace Conferences,[2] and technical conferences such as those which framed the International Telegraphic and Postal Conventions, the International Health Convention, etc.

A third step followed as an inevitable result of these developments. The technical conferences met to frame technical conventions, laying the foundations for permanent co-operation between the interested states in the matters with which they were concerned. But this made necessary the setting up of some permanent central machinery, and so we find the technical conferences framing conventions which in their turn gave birth to institutions. These institutions received the generic name of public international unions. The best known are perhaps the International Telegraphic Union, the Universal Postal Union, and the International Public Health Office.[3] Similarly the efforts of The Hague Peace Conferences culminated in The Hague Arbitral Convention and the panel of arbiters (known as The Hague Court of Arbitration)

[1] The League alone, according to a report of the Eighth Assembly, had, in 1926, 93 meetings of committees and sub-committees, totalling 557 days, a passport conference of one week, 6 sessions of the Council, totalling 28 days, and 30 days of Assembly. 1927 showed an increase on these figures.

[2] This was the only tangible result of The Hague Conferences, which certainly had a strong legal tinge. Nevertheless they were summoned—or at least the first was summoned—primarily to discuss disarmament.

[3] So complex is our modern world that by the beginning of this century the number of public international unions and other permanent international bodies was nearly 300. Since the war it has grown enormously. The *Handbook of International Associations*, issued annually by the League Secretariat, enumerates 600 international associations, whose purpose is other than that of earning money (of course, if international companies, firms, trusts, banking associations, business or trading enterprises, etc., were included the number would be too great to estimate—modern economic life is thoroughly international).

These 600 associations cover every conceivable aspect of life in society, and range in importance from obscure collections of cranks to powerful world-wide associations, such as the Boy Scout Movement, the great athletic associations responsible for such imposing events as the Olympic Games, the International Union of Railway Administrations, the Universal Postal Union, International Chamber of Commerce, International Congress of Trade Unions, International Co-operative Alliance and the Socialist Internationale, the great inter-Governmental technical organizations of the League, etc. The whole of this development has taken place since the beginning of the nineteenth century, and most of it in the last thirty or forty years. The number of international associations continues to increase, and the importance of most of the existing associations is steadily growing.

which it provided. Lastly, the holding of conferences whenever peace was threatened became a habit buttressed by the argument that war was not only the concern of the belligerents but of the rest of the international community, which, although politically neutral, would suffer economically. This habit further became crystallized in a quasi-institution known as the Concert of Europe, or Concert of the Great Powers. It is not too much to say that if the Concert of Europe had not split up into two rival groups—the Triple Entente and the Triple Alliance—the war would never have come, or that if Grey's efforts to revive it and expand it into some sort of league or association of nations had succeeded the war could have been averted.

The way these new developments in international life arose during the nineteenth century is traced by Mr L. S. Woolf in chapter five ("Conferences, Congresses and the Concert of Europe") of Part I. of his book, *International Government*,[1] and chapter one ("International Organs and Organisms") of Part II. of the same. Mr Woolf summarizes his conclusions in chapter five as follows :—

> "A new system of international relationships began to appear in the last century. The pivot of the system was the making of international laws and the regulation of certain international affairs at international conferences of national representatives. The important part of the system was the expressed or unexpressed acceptance of the principle that such affairs should only be settled by the collective decision of the Powers."

Again, in chapter seven of Part I., Mr Woolf writes :

> "A vague protoplasmic international authority has made its appearance in the nineteenth century; a primitive organism with two rudimentary organs, one consisting of judicial tribunals and the other of conferences of representatives."

This was published in 1916 and referred to conditions in the last century, but if the words "vague," "protoplasmic," "primitive" and "rudimentary" were left out it might pass for a summary description of the existing League.

THE WORLD WAR

During the war both sides were forced to coalesce to a degree that would have been thought impossible before. The Allies pooled and jointly controlled their shipping, foodstuffs and raw materials, rationed themselves and neutral nations, and put their naval and military forces under a single command. Among the Central Powers unification went much further, and almost resulted in

[1] London: George Allen & Unwin Ltd.

creating the unified Central Europe of which Friedrich Naumann dreamed.[1] Thus the tendency to extend organization across political frontiers was accentuated under the enormous pressure of the war, and the idea of the community of nations as a congeries of sovereign entities was further undermined.

At the same time the war broke up the system of rival groups of empires, or, rather, brought to fruition the seeds of decay and revolt that that system bore within itself; anarchic nationalism plus material development led to the formation of large empires, but also gave the will and the power to assert freedom to the different nationalities within those empires. The "separating out" of the Balkan States was the first sign in East Europe of this process, in this case made possible by the decay of Turkey and itself hastening that decay. The evolution of the Austrian Empire into the Dual Monarchy and the growing restiveness of the Slavs within the monarchy were further signs. Poland, of course, had never been reconciled to national extinction, and Finland had, though with diminishing success, steadily resisted that fate. The national movement in Lithuania, Latvia and Estonia was, however, almost entirely a product of the nineteenth century, the growth of a feeling of conscious nationhood, where such feeling had not existed before.[2] Thus the war, while showing the limitations of state sovereignty by emphasizing the interdependence of states, strengthened the idea of the nation-state as the unit in international life. Broadly, and on a long view, the war weakened the idea of the state and strengthened the sentiment of nationalism.

Why the War came

The old order, or rather anarchy, of rival empires carried within itself the seeds of destruction, owing to the very nationalism by which it justified its existence. It was also doomed because it was based on ideals of international rivalry and jealous sovereignty that led inevitably to war. Modern wars are, in the main, due to the interaction of two causes—predatory economics and savage nationalism—both of which may be taken as expressions of human nature vitiated by false and out-of-date ideas. Competition for markets and sources of raw material on the part of small but powerful groups of producers and their identification with national

[1] A summary description of Austro-German negotiations on this matter during the war is given in Grossman's *Methods of Economic Rapprochement*, issued as one of the preparatory documents for the Geneva Economic Conference of May 1927.

[2] Lithuania was previously, of course, part of the Lithuanian-Polish union, but as such was a geographical expression and a dynasty rather than a nation. The Lithuanian nation of to-day, so far from being a continuation of this old tradition, is rather a denial of the tradition, a launching forth on a new course.

interests through the agency of " patriotism " are the fundamental cause of colonial wars. National oppression giving rise to " Irredentism " is the other cause of wars. These causes generally appear combined in varying proportions and complicated by a " vested interest " element contributed by soldiers, armament firms, patriotic writers, professors, parsons, etc. There are traditions of honour impelling a great nation to bully a small nation rather than submit to peaceful settlement, even at the risk of precipitating a general war. There is the desire of military men and militarist politicians to seize or retain territory on strategic grounds —that is, to provoke one war in order to be better prepared for the next. There is the psychological effect of big armaments, preparation for war and the consequent constant preoccupation with war. There is the pressure to make war brought to bear by military men at every crisis. The most striking fact about the outbreak of the late war—a fact brought out particularly clearly by Professor Sydney Faye, in his three articles in *The American Historical Review* [1] —is that the military measures taken by Austria-Hungary and Russia to strengthen the hands of their diplomats for preserving peace ended in the militarists " taking charge " and forcing war in Austria-Hungary, Russia and Germany. This was what happened in the historic twelve days. The main trend of events in the preceding twelve years is well summed up in the statement that

> " What has not been sufficiently recognized hitherto is the fact that both the Franco-Russian and the Triple Alliance were transformed in character in the years before the world war from originally defensive into potentially offensive alliances—that is, any member of either alliance could pursue an aggressive policy and feel pretty sure that, if this goaded a great Power into an attack upon it, it could count on the armed support of its allies." [2]

The causes of the late war were, briefly : (1) trade and colonial rivalry between Great Britain and Germany, degenerating into naval competition, Great Britain wishing to retain her place in the world and maintain the relative positions of herself and Germany, while the latter wanted a " place in the sun "—an expression left ominously vague [3] ; (2) " Irredentism " between

[1] Particularly the last article, of January 1921 : the other two articles appeared respectively in July and October 1920.

[2] Sydney B. Faye, *New Republic*, October 14, 1925.

[3] The invasion of Belgium was more a result and a " popularizer " than a cause of the war. It had long been known that the so-called Schlieffen plan of mobilization, dating back to the beginning of the century, provided for the invasion of Belgium, and the military plans of the Allies were based on the assumption that they would fight Germany in Belgium. The cause of the war lay in eastern rather than western Europe. France was drawn in because of Russia, and Great Britain because of France.

France and Germany and between Serbia and Austria-Hungary. There were many Frenchmen who wanted Alsace-Lorraine back and wished to humble Germany and regain the position of France as the first Power on the Continent, and more who feared Germany. Austria-Hungary wished to crush or absorb Serbia and the latter desired the break-up of the Dual Monarchy ; (3) Imperialism—that is, a mixture of trade and nationalist rivalries, with a large dose of egoism and desire for prestige and power, and very little concrete justification—between Austria-Hungary and Germany on the one side, and Russia on the other, in the Balkans and Turkey.[1] There were internal causes, too, such as the vicious circle of armament competition producing the conviction that there must be either war or revolution, and the pressure of vested interests which preferred war to revolution or reform.

How the War came

During and since the war a number of documents from the archives of Belgium and Tsarist Russia have been published, as well as the contents of the Austrian and German Foreign Office archives, and a large number from the British Foreign Office. A number of the most important statesmen, soldiers, etc., on both sides have published more or less illuminating memoirs. All this new material, as well as all that was known up to the outbreak of the war, has been used—*e.g.* in England by Mr G. P. Gooch in his book, *The History of Modern Europe : 1878-1919*, and by Mr G. Lowes Dickinson in *The International Anarchy* ; in the United States

If Belgium had not been invaded it seems fair to say that whereas opinion would have been more divided, and there would have been more resignations from the Cabinet, Great Britain would nevertheless have felt bound to enter the war. In 1870 she held the balance between France and Germany, and protected Belgium by threatening to come in against the nation that first violated that country's neutrality. Since then she had become part of one of the alliances that constituted the balance of power in Europe, and so when war broke out was forced more or less automatically to take part.

[1] That the chief " Irredentist " causes of the war were Alsace-Lorraine, Serbian irredentism among the South Slavs in Austria-Hungary, as well as Russian claims to East Galicia and Pan-Slavism generally, is fairly well known, but the fact that Polish desire for independence and reunion was one of the factors making for war is not so generally realized. In this connexion the following passages from the memoirs (*Wspomnienia i Dokumenty*, vol. i., 1846-1914, p. 289) of Leon Biliński, published in April 1924, in Cracow, is interesting, for M. Biliński was Austro-Hungarian Finance Minister, Governor-General of Bosnia-Herzegovina and a member of the Austrian war party at the outbreak of the war. Replying to the accusation that he was one of the men who caused the war, M. Biliński writes:

" I doubt the power of any one man to cause a world war. And even had I possessed the power I should certainly have remembered that since the fall of Napoleon and the days of Mickiewicz one generation of Poles after the other have looked to a European war that would crush Russia for the resurrection of their Fatherland. And I should further have remembered that particularly the policy of Austrian Poles was based on the idea of a coming European war in which Austria, with the help of the Polish people, would make an end of our eternal enemy—Russia. How could a free and independent Poland arise unless Russia fell first? "

by Professor Sydney Faye in the three articles in *The American Historical Review* already mentioned, entitled " New Light on the Origins of the War," and in France by M. Pierre Renouvin in *Les Origines Immédiates de la Guerre*, and M. Alfred Fabre-Luce in the first half of *La Victoire* [1] (published in 1924). No one who studies this material can doubt the fairness, ability and erudition of the authors, and no one who possesses any sense of evidence can doubt, after perusing their books, that the war was a disaster that grew out of the whole course of European policy during the last half-century, and for which *all* the governments concerned were in a varying degree responsible.[2]

The evidence is absolutely overwhelming, and this one basic fact may be taken as already established irrefutably. It is no longer a question of opinion. It cannot be sufficiently emphasized that virtually all historians of any standing and with any claim to be taken seriously when writing of the origins of the war are now agreed. This fact must become, consciously and subconsciously, the basis of all our thinking and feeling on the war and how to make peace, for unless we are realistic we shall fail.

The fact of divided responsibility cannot in any case be surprising to anyone not blinded by the prejudices born of the war, for it is on the face of it improbable that of two rival coalitions of Great Powers, which have been arming and counter-arming and periodically threatening each other with war for half-a-century, one should be wholly guilty and the other wholly innocent when the long-expected war finally breaks out. The traditions that made war sooner or later inevitable were supported enthusiastically by the great bulk of opinion in all countries, and these same traditions caused the war to be accepted unquestioningly when it came, and made both sides fight blindly, stubbornly, with

[1] *The Limitations of Victory* (London: George Allen & Unwin Ltd.).

[2] On this fact the authors concerned are unanimous. Gooch puts Austria-Hungary first, Germany second, and Russia a close third. Faye's articles also leave Count Berchtold, Austro-Hungarian Foreign Minister in 1914, with the unenviable distinction of being the chief single factor that precipitated the war. Russia comes second and Germany a close third. M. Fabre-Luce almost puts Russia first, with Austria-Hungary and Germany tying for second place, and the French Government rather encouraging than restraining Russia in the course which led to the precipitate general mobilization. The British and American accounts both imply that the French Government, during the crisis, showed a strange passivity—while not wanting to make war, it did not strive officiously to keep peace alive—while the British Government, although doing its best to avert the calamity, found itself hamstrung by past policy and present commitments. The young German historian, Valentin Veit, in a book referred to by Mr G. P. Gooch as " the most dispassionate analysis of the problem of responsibility which has yet appeared in Central Europe," places Russia first among the offenders, Austria second, France, England and Germany third. " None of the Powers, he concludes, was wholly innocent, none alone guilty. The world spirit was ready for the world war."

insensate bitterness, until one side collapsed through sheer exhaustion, leaving Europe in ruins. In examining the causes of this vast calamity there are differences of degree, no doubt, as one progresses from west to east Europe, but it is intellectually absurd, as it is morally pharisaical, to indulge in the conception of a "guilty" nation or group of nations. Guilt there is, no doubt, and heavy, but it is the common guilt of Western civilization.

For us in England, in particular, it is necessary to realize that our foreign policy failed and why it failed. There was little or no failure to foresee the war or to prepare for it—what we already know of the years leading up to the war amply suffices to dispose of that charge.[1] It is true there are people who clamour for more hairs of the dog that bit them—who believe, that is, both that war is inevitable and that we could have avoided the world war by binding ourselves more closely to France and Russia, and increasing our armaments. But any change of policy in this direction would merely have quickened the *tempo* of the race in armaments, multiplied the crises between the two rival alliances and made war more likely at each crisis. We should, in fact, have had the paradox of preparing for war to maintain peace culminating, logically, in precipitating war in order to prevent it—as Lord Fisher proposed when he wanted to "Copenhagen" the German fleet, and as the Austrian, German and Russian general staffs subsequently did. This particular line of argument has been

[1] See in particular Mr Asquith's *Genesis of the War*; Lord Haldane's *Before the War*; Mr Churchill's *The World Crisis*; Lord Grey's *Twenty-five Years*, which show that for many years before the war the Government were straining every nerve to get ready for what was regarded as an inevitable and imminent war, and that when the war came the navy was in first-class condition and the Expeditionary Force perhaps the most efficient unit of its size anywhere in the world. Moreover, the exact use to which the army and navy would be put at the outbreak of war, down to the time and place of landing, route of march and transport and commissariat arrangements for the Expeditionary Force, had been regulated in advance by military and naval "conversations" with the French, Belgian and Russian admiralties and general staffs. The fact that both army and navy might have been even better in 1914 is irrelevant, for military preparedness is a dynamic and not a static condition, and like all things else in this world is relative. The fact that the war, when it came, was different from what had been expected is also irrelevant, for every War Office prepares for the next war on the assumption that it will be like the last—and it never is. In both these respects all the other belligerent Powers, including Germany, showed a similar lack of readiness for what was to come. Great Britain, like the other belligerents, was not prepared for what the war developed into, but was as completely prepared as the rest for the kind of war that was expected—in our case a war on the traditional model, where a small but highly efficient professional army and subsidies would help our Continental allies, while sea-power did the rest. Nobody imagined before the war that the unparalleled effort the Empire actually made was possible: a conscript army of many millions campaigning all over the world—Great Britain financing and supplying the whole Grand Alliance and holding the seas—for four years.

conclusively exposed in Mr J. M. Robertson's book, *The Future of Militarism.*[1]

The contrary criticism must be faced—that we helped to make the war inevitable by getting tangled up with France and Russia, by too much concentration on preparation for war, too little attempt to prepare for peace, too much secrecy, "end justifies the means," and lying in our policy. Our record in Morocco and Persia, the secret agreements with France, and our attitude to the Russian Revolution in 1905 are cited as evidence. As a result, it is said, we were unable to stave off the crisis or to conjure it when it came. Greater detachment and a more single-minded devotion to peace (as distinguished from the balance of power) might have preserved peace. The policy actually followed apparently increased the readiness of both Germany and Russia for war,[2] and at any rate certainly failed to keep the peace.

THE ROOT OF THE MATTER

But retrospective wisdom is always easy. It is necessary to stress the overwhelming failure, to indicate the causes, and draw the moral that our foreign policy, methods of conducting foreign affairs, and indeed our whole attitude and system in international relations, need thorough overhauling. This indeed has been eloquently, even passionately, urged by the man—Lord Grey—chiefly responsible for British foreign policy in the years immediately preceding the war. And in justice to Lord Grey and the Government of which he was a member it must be emphasized that they were not free agents. They did not make the balance-of-power system with its competition in armaments—they were caught in it. They tried to get out—tried to widen the Triple Entente into an understanding that would include Germany, tried to arrange a naval holiday, tried to make the second Hague Peace Conference a success and to revive the concert of Europe, and make it the starting-point for a real league of nations. With more imagination, vigour and faith they might have broken free, smashed the system, set the world on a new course. But the difficulties were vast. Around them were nations possibly even more wedded to force and anarchy than their own. There was no powerful body of opinion urging a more boldly "international" and conciliatory policy—such pressure as there was, was mostly

[1] Published in 1916 by T. Fisher Unwin Ltd.

[2] *Cf.* Fabre-Luce, *op. cit.*, p. 67: "Pendant toute la période où les évènements étaient encore en suspens, Grey n'a pas été assez énergique dans ses conseils au gouvernement russe pour être écouté de lui, et pas assez rapide dans ses concessions a l'Allemagne pour la séparer à temps de l'Autriche."

the other way. They had to work through men and institutions shaped by and believing in the old traditions and standards. Behind them was an ignorant, heedless, frivolous public opinion with vicious and sensational streaks. Mr Lloyd George threatened war over Morocco in 1911, and the act was popular. The fact that secret agreements existed was repeatedly asserted in the House and met with general indifference—or approval. The infamy of connivance at the doings of Tsardom in Persia, Finland and elsewhere was exposed in certain parts of the Press,[1] and was plain for all to see who would. We could have backed the Russian Revolution in 1905, or at least forborne to lend Tsardom the money for throttling it, but we had no faith ; although we took the risk of isolation on the Continent in order to fight the Boer War, we were not willing to risk even a temporary estrangement or weakening of Russia by refusal to help the tottering old regime —this although it was fairly obvious that reaction and militarism in Germany and Russia lived chiefly by taking in each other's spiritual washing, and the fall of one would lead to the disappearance of the other. In 1911 Lord (then Sir Edward) Grey made a big speech in the House, declaring that the race in armaments must soon become intolerable and end in war or revolution, and foreshadowing some sort of league or concert of Europe as the way out. But there was no movement of awakening and revolt on the part of public opinion, no realization of what was coming. We drifted into the war armed cap-à-pie and dreaming.

There is no stranger phenomenon than the contrast between the feverish arming and counter-arming of the various nations and the utter unpreparedness of public opinion all over Europe when the war finally came. The chief emotion of the common man in Europe was incredulity—a feeling that it was all somehow a mistake, and anyway must be over in a few weeks. This discrepancy, and that between what people believed and what actually happened throughout the war and at the Peace Conference, the infinitude of human suffering that resulted—all these things are the enormous proof that there is something radically wrong with our boasted civilization, a loss of contact with reality, a fatal inability to control the power that science has enabled mankind to gain over nature.

" The root of the evil lay in the division of Europe into two armed camps, which dated from 1871, and the conflict was the offspring of fear no less than

[1] After " respectable " papers, in deference to representations made at the instance of the Russian Ambassador in London, had refused to print the unsavoury facts.

of ambition. The Old World had degenerated into a powder magazine, in which the dropping of a lighted match, whether by accident or design, was almost certain to produce a conflagration. No war, strictly speaking, is inevitable; but it requires rulers of exceptional foresight and self-control in every country to avoid catastrophes. It is a mistake to imagine that the conflict of 1914 took Europe unawares, for the statesmen and soldiers had been expecting it and preparing for it for many years. It is also a mistake to attribute exceptional wickedness to the Governments who, in the words of Lloyd George, stumbled and staggered into war.[1]

" Blind to danger and deaf to advice as were the civilian leaders of the three despotic empires, not one of them, when it came to the point, desired to set the world alight. But though they may be acquitted of the supreme offence of deliberately starting the avalanche, they must bear the reproach of having chosen paths which led straight to the abyss. The outbreak of the Great War is the condemnation not only of the clumsy performers who strutted for a brief hour across the stage, but of the international anarchy which they inherited and which they did nothing to abate. . . .

" In a new world where familiar landmarks have been swept away by the storm and the earthquake, the beginning of wisdom is to recognize that the survival of European civilization is bound up with the vitality and authority of a League of Nations embracing victors and vanquished alike within its sheltering arms." [2]

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[1] " The more one reads memoirs and books written in the various countries of what happened before the first of August 1914, the more one realizes that no one at the head of affairs quite meant war at that stage. It was something into which they glided, or rather staggered and stumbled, perhaps through folly, and a discussion, I have no doubt, would have averted it."—LLOYD GEORGE, December 23, 1920.

[2] G. P. Gooch, *History of Modern Europe, 1879-1919.*

CHAPTER II

THE PEACE OF PARIS AND THE WAR MIND

" In each Government I have visited I have found stubbornness, determination, selfishness and cant. One continually hears self-glorification and the highest motives attributed to themselves, because of their part in the war. But I may tell you that my observation is that incompetent statesmanship and selfishness are at the bottom of it all."—COLONEL HOUSE.

" America's entrance . . . would mean that we should lose our heads along with the rest and stop weighing right or wrong. It would mean that a majority of people in this hemisphere would go war-mad, quit thinking, and devote their energies to destruction. . . . It means an attempt to reconstruct a peace-time civilization with war standards and at the end of the war there will be no bystanders with sufficient power to influence the terms. There won't be any peace standards left to work with. There will be only war standards. Once lead this people into war and they'll forget there ever was such a thing as tolerance."—WOODROW WILSON.

" . . . during the war we all sinned together in vilifying our opponents. We now feel that the nations all went stark mad together, and brought upon themselves and each other a calamity as unnecessary as it was disastrous. Our plain duty now is to restore the solidarity of European civilization, to help the crippled nations to recover and to create whatever safeguards are possible against another outbreak, from which there could be no recovery. Our justice must be touched with generosity and we must help to bear one another's burdens, moral as well as material."—DEAN INGE.

WE have seen that it was a common failure of wisdom and decency that led the nations into war. By subtle distinctions between predisposing and determining causes it may be possible to pin most of the immediate responsibility for the outbreak of the war on the shoulders of certain politicians and military chiefs in the three great autocratic empires—Germany, Russia and Austria-Hungary. But let us leave historians to sketch in the details and apportion the finer shades of blood-guilt. At present we know enough—and only enough—to say quite definitely that no one nation is entitled to cast the first stone or adopt an air of moral superiority over others as regards the origins of the war. We are not only all in the same boat—we are all tarred with the same brush.

GERMAN AND AUSTRIAN WAR AIMS

When we turn to war aims and peace terms we find the same close similarity between the two sides. Germany's war aims [1] must remain largely a matter for conjecture, since Germany was beaten and because they would, like those of the Allies, have in any case varied with Germany's power to impose them on her

[1] " War aims " might be defined as what a belligerent Power would like to get as the result of victory, whereas " peace terms " are what it is able to obtain at the Peace Conference. In case of " integral victory," of course, the two things would be the same, failing a conflict between the victors, or a change of mind on their part after victory had been won.

enemies. But there are some data to go upon. Thus Mr J. W. Headlam, in a book published during the war (*The Issue*), collected and analysed the manifestos of the six great Industrial Associations and of prominent German intellectuals, as well as some speeches of the Chancellor and party leaders, Prince Bülow's *Imperial Germany* and Friedrich Naumann's *Central Europe*. This material shows, he points out, the unanimous desire of all but the Socialist parties in favour of

> " what they call the security, what we call the domination of Germany. The essence of the whole is that the result of the war must be an alteration in the political condition and in the map of Europe, the object of which will be to give Germany that complete security which can only be attained by complete ascendancy. The essential thing is that there are to be large annexations which will completely guarantee the territory of Germany from attack, and thereby leave all other countries open and defenceless to attack from Germany. An enlarged empire, an empire so strong that no one alone or in coalition will be able to attack it—that is the avowed aim of every responsible political leader or party."

These war aims provided for the annexation of the coal districts of Longueville and Briey, some form of protectorate over Belgium and, we may safely add, wholesale annexation of Allied colonies, the imposition of one-sided disarmament and commercial treaties and a big indemnity. To this may further be added the Brest-Litovsk Peace, which set up a series of new states, from Finland in the north to the Ukraine in the south, under German hegemony. There was never any agreement between Germany and Austria as to the fate of Poland, and never much prospect of the Central Powers keeping their grip on the Ukraine, but the Brest-Litovsk Peace nevertheless shows what the war mind could do in Germany. Austria-Hungary, too,[1] desired to " rectify " slightly her frontiers with Italy, make Serbia enter the Austro-Hungarian Economic Union and establish a protectorate over Albania. Finally, there was the all-but-consummated " Middle Europe " project [2] to show what would have been the fate of the world if there had been an integral victory for Germany.

Allied War Aims

But if we now turn to the war aims of the Allies, as laid down authoritatively in the secret treaties, we find similar provisions for annexations and partitions leading to the absolute dominance of the Allies and the complete subjection of their enemies. In

[1] See Gooch, *ibid.*

[2] A summary description and references to the literature of the subject are given by Grossman, *op. cit.*

these treaties, concluded between the Allies during the war, we find the Allies dividing up and annexing practically the whole of Persia and Turkey.[1] Great Britain and France subsequently obtained most of what they staked out for themselves in Syria, Palestine and Mesopotamia, although France had to give up territory in the interior of Asia Minor assigned to her by the secret treaties, while Great Britain gave up her portion of the Persian so-called neutral zone, and both had to temper annexation by acceptance of the mandates system. The Italians were promised Adalia, Smyrna and territory in southern Asia Minor. Russia was to take northern Persia and northern Asia Minor, including about one-third of the south coast of the Black Sea. She was further to have Constantinople, the Straits and eastern Thrace.

In Europe, Italy, besides the Trentino and southern Tyrol, was to take or "neutralize" most of the Adriatic coast, including the whole of Dalmatia. France and Russia concluded a secret agreement, in spite of British disapproval, by which the French were to have a free hand in western Europe and use it for the return of Alsace-Lorraine, and, in addition, the annexation of the Saar Basin, the detachment of the whole Rhineland from Germany and its erection into a so-called "neutral" state under French military occupation. A military and economic alliance with Belgium and the association of that country in France's Rhenish buffer-state policy was to make Belgium a French protectorate in all but name. By this agreement Russia secured a free hand in east Europe and obtained France's consent to treating the Polish question as a purely domestic affair of Russia's. Russia was to annex Posen (*i.e.* the German part of Poland) and East Galicia, "that sole jewel still lacking in the crown of the Tsar," as Premier Goremykin democratically expressed it, was to break up Austria-Hungary, and establish a sort of protectorate over the whole of south-east Europe by the help of the newly created Slav states, as well as her dominance in the Balkans obtained by the annexation of Constantinople, the Straits and eastern Thrace. In the north, Russia obtained the consent of France to abrogate the Paris Agreement of 1854 and fortify the Aaland Islands, which would have made her mistress of the Baltic.[2]

[1] See *The Secret Treaties*, by Seymour Cocks, where the texts are given. They were published by the Bolsheviks, who found them in the Russian Imperial Archives.

[2] From the outset Tsarist Russia exerted an evil and ever-increasing influence in the Allied camp, and turned her very disasters in the field into a means of exerting pressure on her Allies by threatening them with a separate peace. It was largely

The Peace Terms

The smashing up of Austria-Hungary, the partition of Turkey, the taking over of Germany's colonies, one-sided disarmament and commercial treaties, and the imposition of huge indemnities were all actually incorporated in the peace treaties. The ex-enemy states were put entirely and utterly at the mercy of the victorious Allies, who insisted upon *dictating* the Treaty settlement, of excluding their ex-enemies from the League,[1] and of forcing Germany at the bayonet's point to declare herself alone responsible for the war. The handiwork of the Peace Conference was afterwards defended chiefly on the ground that it did to Germany what Germany would have done to the Allies had she won—thereby proving the unconscious moral identity of the defenders of Allied and German war aims and peace terms.

Russian pressure which was responsible for the uncompromising nature of the Allied rejoinder of December 30, 1916, to a German proposal for peace negotiations —so much so that *The Manchester Guardian* bluntly declared the Allied note read as though it were composed in Petrograd. *Cf.* too the following statement by Victor Chernov, when he was Minister for Agriculture in the Kerensky Government:

" Unfortunately the struggle against Imperialism takes the form of fighting evil by evil. From the start of the war the Russian autocracy began to lead its allies, the democracies of Western Europe, in that direction, and marked out for itself the biggest and most savoury bit—Constantinople, the centre of the world's thoroughfares and the source of many previous murderous conflicts between great nations. Meaning to get the lion's share of the spoils—Armenia and the Straits—the Russian autocracy did not stop short at blackmail, and insinuated the possibility of a separate peace.

" Meeting with some hesitation on the part of the Allies, the Russian autocracy then exercised direct pressure, declared its pretensions openly, and promised its full support should the Allies demand compensations, thereby pushing them on to the familiar road of territorial ambitions. . . .

" Autocratic Russia initiated the evolution of the original war aims of the Allies. Without having actually created Imperialistic tendencies in the camp of the Allies, she strengthened them and forced them to the front " (Reported in *The Manchester Guardian*, July 3, 1917).

The influence of Russia was undoubtedly one link in the tragic chain of events that led the Allies to refuse all chance of a negotiated peace—as hinted in Lord Grey's and described in Colonel House's memoirs—and prolong the war for two years in the name of that chimæra " military victory."

It must not be imagined, however, that the men who made the secret treaties were necessarily bad or actuated by low personal motives. France and Great Britain once having got into the war felt it necessary to win and to buy the support of other states for the purpose. The latter again would not risk their national existence by entering the war without assurance of tangible gains. The governments were trustees for their peoples and thought they were doing well for them. This motive again led to securing territory for strategic or economic reasons—on the ground that states who had been put to the sacrifice and danger of war should seek compensation. It is the archaic ideas of what constitutes national interests that are so appalling, ideas—shared by both sides—which first made the measures designed to preserve peace bring about a world war and then made the efforts of the belligerents to win the war render a decent peace well-nigh impossible. The secret treaties were just as much an essential part of the war as the hatred, fear, greed, lying, spying and bestiality needed to prosecute it successfully—were, indeed, little more than the documentary consecration of these passions. War itself is a vile thing, and those who make war have to act vilely.

[1] The American and British governments did want Germany admitted at once, but the French proved obdurate.

LESSONS OF THE PEACE SETTLEMENT

The very fact that the Allies had to fight in unison to beat Germany, while the latter, if she had won, would single-handed [1] have been the undisputed master of the world, might have made an "integral" Allied victory less lastingly disastrous for humanity than a victory of the Central Powers, for the Allies would have fallen out. But if Tsarist Russia and France had appeared together as victors at the Peace Conference, or, failing that, if M. Poincaré and the France of the national *bloc* had possessed the financial strength and organizing capacity to dominate Europe single-handed, the world would have been in much the same case as after a German victory. In either case Europe would have undergone a period of reaction and oppression reminiscent of the Metternich era and probably ending in social revolution.

As it was, the Russian Revolution made it possible for the United States to enter the war more wholeheartedly than she would otherwise have done, prolonged the war sufficiently to make America's share in the proceedings something to be reckoned with by the Allies, and crippled the worse half of the Allies' war aims. The result was the Allied governments had to compromise between the objects they pledged themselves to in the secret treaties and the aims they professed in public. If Germany had been able to retain some of her fighting strength and spirit after her own revolution the Peace Conference compromise would have been better. The Armistice was concluded because the Allies had promised to base the peace treaties on President Wilson's fourteen points, under the impression that Germany could still fight, and the promise was broken when the Allies learned she could not.[2]

[1] For Germany's allies towards the end of the war had come largely under her control.

[2] That the Allies did break their solemn contract with Germany is conclusively shown by J. M. Keynes, in *Economic Consequences of the Peace*, chap. iv. It seems safe to infer from the spirit and proceedings of the Peace Conference that the Allies acted thus for the reason suggested above. In this connexion the following quotation from pp. 124-125 of Keynes (*ibid.*) is suggestive:

"I do not believe that, at the date of the Armistice, responsible authorities in the Allied countries expected any indemnity from Germany beyond the cost of reparation for the direct material damage which had resulted from the invasion of Allied territory and from the submarine campaign. At that time there were serious doubts as to whether Germany intended to accept our terms, which in other respects were inevitably very severe, and it would have been thought an unstatesmanlike act to risk a continuance of the war by demanding a money payment which Allied opinion was not then anticipating and which probably could not be secured in any case. The French, I think, never quite accepted this point of view; but it was certainly the British attitude; and in this atmosphere the pre-Armistice conditions were framed.

"A month later the atmosphere had changed completely. We had discovered how hopeless the German position really was, a discovery which some, though not all, had anticipated, but which no one had dared to reckon on as a certainty."

Nevertheless Anglo-American resistance forced a partial abandonment of the policy of annexing the Saar and detaching the left bank of the Rhine from Germany, mitigated Poland's claims to Upper Silesia and Danzig, placed certain restrictions on Italy, etc. The defection of Russia left the whole Eastern settlement in the air and gave the new states and Turkey a chance of independence. American opposition mitigated colonial annexation by the mandates system and got the Covenant written into the treaties. Otherwise it is highly doubtful if there would have been any League,[1] and, on the other hand, the very existence of the League in the peace treaties made possible compromises, such as the minorities treaties, mandates, the Saar and Danzig regimes, plebiscites and frontier adjustments, and, most important of all, machinery for ultimately revising, or at least interpreting fairly, the whole Peace settlement. It is arguable that in all these cases there should have been no compromise because the matter should have been settled wholly in favour of Germany. But it is certain that, had the League not been created, these questions would instead have been settled through downright annexation by one or other of the Allies.[2]

Gooch, in his *History of Modern Europe*, relates how, at the end of the Peace Conference, the Germans protested against the deviations of the Versailles Treaty from the fourteen points, and subsequently asked for the retention of Upper Silesia and a plebiscite in Alsace-Lorraine; denounced the cession of Memel and the "rape" of Danzig; urged that they should be given the mandate for their colonies and allowed to enter the League immediately with full rights, and demanded that disarmament should be general and not unilateral. Few will deny that if the Allies had been forced to treat these claims seriously the world would have been spared a vast deal of what we have had to endure since the Armistice, and the future would look brighter than it does.

See also the extreme moderation of Allied aims as set forth by Mr Lloyd George to the Trade Unions on January 5, 1918 (quoted by Gooch, *ibid.*, pp. 642-643), and the corresponding moderation of Austrian and German aims (Gooch, *ibid.*, p. 637) expressed during the period when both sides felt there was a deadlock and feared disaster.

[1] For evidence on this point see Ray Stannard Baker's book, *Woodrow Wilson and World Settlement*, vol. i., chap. xvii.

Temperley's semi-official *History of the Peace Conference*, vol. i., pp. 276-277, testifies that:

"So many vested interests were challenged by the League, and so many new forces had been liberated in Europe which were antagonistic to it, that unless it had been made part of the peace it might have been postponed for a generation. Even more important was the fact that the Treaties themselves were made to centre round the idea of the League to so great an extent that without it they became plainly unworkable. The recognition that the problems raised at Paris can only be solved by a permanent international organization is perhaps the greatest result of the Conference."

[2] *Cf.* Temperley, *ibid.*, vol. i., p. 262: "The Treaty with Germany was also to include the Covenant of the League of Nations. The importance of this decision cannot be over-estimated. It ensured the acceptance of the Covenant by the Paris Conference, and by making it an integral part of the Treaty it allowed many compromises to be made in the Treaty itself which were based on the acceptance by the world of the idea of a powerful and practical League of Nations."

THE AMERICAN, BRITISH AND FRENCH RECORDS

Had President Wilson not made sins of omission and had Mr Lloyd George played a straight game there might have been a less bad Peace. But President Wilson omitted to stipulate that the secret treaties should be cancelled as a condition of America's entry into the war ; he omitted to secure the support of the Senate by including some of the Senate Opposition in his delegation ; and he failed to accept the reservations to the Covenant proposed in the Senate—reservations far less drastic than any possible terms for America's adhesion to the League now. He did not bring with him to Paris any detailed draft of a peace based on the fourteen points.[1] Furthermore, he ignored the economic aspect of international relations,[2] and refused to use inter-Allied indebtedness to America as a bargaining counter, to be used for obtaining a stable settlement. At any rate, he fought superbly to the end, and it was not his fault that he was let down by his allies and knifed in the back by his own people. His greatest weakness was that the American nation had gone as ferociously mad over the war as all the other belligerents, in melancholy fulfilment of President Wilson's own prediction quoted at the head of this chapter. He therefore fought tragically alone at Paris. As the representative of Allied victory he had an enormous popularity, but his only support as a peacemaker came from a handful of British and one or two American liberals (in the national not the party sense).

As for Mr Lloyd George, he generally saw the better course, and always adopted the worse when that seemed necessary in order not to endanger his lease of power. Seizing Germany's colonies, merchant fleet and navy, destroying her overseas' markets, imposing a huge indemnity and one-sided trade treaties, and demanding the trial of the Kaiser and war criminals, invalidated Mr Lloyd George's subsequent pleading with France for moderation.[3] " Wangling " pensions and separation allowances into the reparations' bill—Mr Lloyd George's handiwork with General Smuts as his perhaps unwilling instrument—was also one of the fundamental causes of all the misery the world has suffered since the Armistice, for it was directly responsible for the reparations *impasse*. America, too, bears her share in this—

[1] But see Ray Stannard Baker's strong defence of Wilson on this point, *op. cit.*, vol. i., chap. xii.

[2] This criticism is made even by Ray Stannard Baker, who otherwise writes with frank adulation of Wilson.

[3] See Ray Stannard Baker, *ibid.*, vol. ii., chap. xxvii., for evidence on this point; also Gooch, *ibid.*, p. 689, and the text of Clemenceau's rejoinder to Lloyd George, printed as Document No. 28, in Ray Stannard Baker, *ibid.*, vol. iii.

partly by withdrawal and so dislocating all the machinery for the revision and "interpreting down" of the treaties, but still more owing to her refusal to accept repeated suggestions made during the Peace Conference to settled inter-Allied indebtedness, and thereby make possible an immediate fixing of the sum to be paid by Germany.

Official France—represented by a man appropriately nicknamed "the Tiger"—stood throughout the Peace Conference for nothing but hatred and fear, and a cynically frank desire to cripple and fetter her enemy for ever.[1] From first to last, Clemenceau never pretended to believe in anything but force. The British record at the Peace Conference is certainly no better morally than the French—indeed, it is more contemptible, for Clemenceau at least acted from genuine conviction[2]—but the French were far more destructive politically. Between the two of us, and in spite of President Wilson, we made the Peace of Paris—a demagogic peace, a cruel and stupid, patched-up, hasty, hypocritical peace, as confused as it is arrogant, but a peace that at least possesses the negative merit of having been found out so soon, and the positive virtues of setting up the League and so providing facilities for its own revision. The Peace indeed was better than the policies of the peace-makers in the years immediately following it, and the fact that Europe has survived and is already recovering from both is a surprising tribute to the toughness and viability of Western civilization.

The Underlying Causes

It would argue a superficial understanding of the situation to blame statesmen wholly for the botched work of Versailles and the other suburbs. The causes are profounder than the rascality

[1] Her aims at the Peace Conference are summed up as follows by Ray Stannard Baker, *ibid.*, vol. ii., chap. xxv.:

"1. French military control of the Rhine.
"2. A permanent alliance of the Great Powers to help France to hold it.
"3. A group of smaller Allies to menace Germany from the East.
"4. Territorial reduction of the German Empire.
"5. Crippling of the German political organization.
"6. Disarmament of Germany but not of the Allies.
"7. A crushing indemnity.
"8. Deprivation of economic resources.
"9. A set of commercial agreements preferential to France, prejudicial to Germany."

[2] *Cf.* Ray Stannard Baker, *ibid.*, vol. i., chap. viii.: "When the Conference began, President Wilson had hoped for great and steady support from Mr Lloyd George, but this hope soon faded. As the Conference deepened, the President's personal respect and admiration for Clemenceau increased. They agreed upon scarcely anything whatsoever, but each recognized that the other stood honestly for a certain definite and intelligible policy which could be argued and fought for. And each recognized in the other an antagonist worthy of his steel."

or weakness of a handful of politicians. Lloyd George's record at the Conference was bad—but it was popular. He assumed power during the war in ways that were unsavoury, and was a hero. He spoke of the war in terms of dog-fights and knock-out blows, and the people applauded. He won his General Election by an overwhelming majority on hanging the Kaiser and making Germany pay for the war. There were many who spoke of a moderate Peace, reason and reconciliation—they were crushingly defeated. Mr Lloyd George is a man of the people—rather more sophisticated no doubt, and far cleverer and more energetic, but with the virtues, standards and beliefs of the man-in-the-street. He is essentially, for good or for ill, a great tribune of the people. On the rare occasions when he did try to rise above the blood-lust of the people he was faced with the imminent risk of losing his job, and promptly retracted.[1]

In fact:

" Critics after the event forget that peace had to be made in an atmosphere still reeking with the fumes of war and still more or less dominated by the military spirit. It could not have been otherwise. For four years the nations had been committed to the use of every agency in building up a war psychology ; to giving men the martial spirit, instilling hatred as an antidote for fear, driving nations into an artificial unity of purpose by the force of sheer necessity. As a monument to this passion and bitterness there were 7,500,000 men lying dead in Europe and 20,000,000 had been wounded ; there were devastated cities, ruined mines and factories, stupendous debts. Build up such a psychology for four years, inoculate the entire public opinion of the world with it, and then ask four men at Paris—or one man at Paris—to change it all in three months ! It was not merely a world peace that had to be made but a world psychology that had to be changed." [2]

The War Mind

We are, mercifully, already forgetting the state of mind that ruled in the years of the war and the Peace Conference. But sometimes it is necessary to dwell on painful facts if we are to gain a living apprehension of the truth. The only way to dissolve

[1] When rumours of his memorandum to the " Big Four " at the Peace Conference, urging a moderate peace, reached London, a violent Press campaign was started against him by Lord Northcliffe, and 370 of his hard-faced M.P.'s sent him a telegram in which occurred the following passage:

" Our constituents have always expected that the first action of the peace delegates would be, as you repeatedly stated in your election speeches, to present the bill in full and make Germany acknowledge the debt."

Mr Lloyd George at once capitulated.

[2] Ray Stannard Baker, *ibid.*, vol. i., chap. ix. It may be observed that no one had asked four men—or one man—to " change it all in three months." The Allied and Associated Governments took it upon themselves to set about the task of world settlement by dictation, and are consequently responsible for the result, so far as governments and individuals are agents and not mere symptoms in such world-shaking events.

a complex and so end its baneful sway is analysis, substituting conscious knowledge for unconscious obsession. Hence it is desirable to consider carefully a few specimens of the war mind in England, drawn at random from a large number of similar utterances by persons far above the average in intelligence, education and liberality of view, but all conscious that they reflect the attitude of the great mass of their countrymen. The three samples given below are, it must be noted, merely emphatic and precise expressions—elaborate rationalizations—of the prevailing complex, which in the average man was the same but less articulate and less consistent, and that was in the other belligerent countries more violent, if possible, than in England.

HANGING THE KAISER AND PUNISHING WAR CRIMINALS

The first specimen is an article by Principal L. P. Jacks, entitled "Punishment and Reconstruction," in *The Hibbert Journal* of April 1917. This writer is exceptionally humane and enlightened—indeed so advanced in his views that he must now be numbered among those who condemn the League of Nations because it is a "league of governments" and not a "league of peoples"—and his humanity is conspicuous in the article we are now considering: Principal Jacks is struck with the fact that all British schemes for reconstructing civilization postulate an Allied victory and would collapse like a house of cards if the Allies were defeated. While not acquainted with reconstruction literature in Germany, he says, it is no doubt similarly based on the hypothesis of a victory for the Central Powers. This fact reveals the most perplexing problem of the war.

> "Let victory come to whichever side it may, it would appear that one half of Europe will be impoverished, humiliated and broken-hearted. A condition more unfavourable to the birth of a new and better age could hardly be imagined."

Neutrals and writers "above the battle" have, with some show of plausibility, declared that the only way out is "to put a stop to the conflict before either side can claim the victory." This is not the writer's view: he is "in the battle," as much as any civilian can be, and believes that "any issue short of a clear vindication of the principles for which the Allies are fighting would be an irreparable disaster to the human race." What the Allies must do is to find some way of applying their victory that will enable their adversaries to "share and consciously share with ourselves in its fruit." Such an application of victory is

difficult but not impossible to imagine, says Principal Jacks, and proposes his solution in the following terms :

" For ages past the life of man has been darkened and blighted by the presence of a class of criminals who, under many names and disguises and by various arts, have first befooled and then exploited the nations who tolerated them. . . . In spite of all the efforts which the nations have made, some of them partly successful, to rid themselves of the past, these criminals, thanks to their cleverness in adopting new disguises, have managed to survive. To them, to their characters, habits, traditions and ambitions the world is indebted for the measureless catastrophe of the present hour. It is a vain thing to explain the war in terms of ' ideas,' ' tendencies,' ' historical forces,' or other such abstractions. Its cause lies in the characters, and the positions, of a small group of exceptionally dangerous men. Their chief representatives to-day are well known to the whole world—best known perhaps among the very people whom they have befooled and betrayed. They are responsible for the war, and for all the faithlessness, cruelty and general moral imbecility which has surrounded the conduct of the war with the darkest crimes of history.

" Concentrating attention on this obvious truth, a vision begins to form itself of an ending to the war which would be nothing less than a general victory for all Europe—indeed, for all the world ; a victory in which the Central Empires themselves would be the chief sharers and could hardly fail to recognize themselves as such. It is, I frankly confess, a vision of punishment, but of punishment so solemn, so deliberate, so just, and so universally approved that it would shine to future ages as one of the most sacred deeds in the history of man. Let these malefactors, then, be informed, by methods which admit of no misunderstanding, that the time has come at last when their presence, and the presence of their likes, is no longer to be tolerated on this planet. Let them be called to account for their crimes, solemnly judged, and effectually disposed of by the human race. A victory which takes that form will be a victory for all mankind. [These criminals number only a few thousands.] . . . Their removal would bring into the moral life of all nations that breath of exhilaration, that sense of freedom, that feeling of unity, which are precisely what is needed to start civilization on a new career, and without which, it may be confidently said, the new start cannot be made. We might be well content to leave all other proposals in abeyance for the time being and to concentrate upon this as our essential aim in the war."

Thus we find Mr Lloyd George's election slogan of hanging the Kaiser and punishing the war criminals anticipated from an unexpected source and on unexpected grounds.

Treating Germany like a Mad Dog

The second specimen is provided by Mr J. M. Robertson's book, *The Future of Militarism*, published in 1916. This book is a devastating analysis of a curious production called *Ordeal by Battle*, the work of a young man who took to mystic militarism as a result of the war. Mr Robertson, whose standing as a rationalist and Liberal publicist, and the vigour, clarity and originality of whose mind are known to all, mercilessly exposes

every militarist fallacy in this book, and convincingly preaches the doctrines of common sense and humanity. Thereafter he goes on to outline the views of sensible men, of the multitude who stand in the middle and are distrustful of the extremists at either end. The nature of these views at that time may be gathered from the following quotations :

" The course to safety must be through a progressive curtailment of militarism with a safeguarding machinery which contemplates the possibility of a war to stop a war. And that machinery will have in the first instance to be set up by the present Alliance of the Eight Nations, into which will be welcomed every Neutral that is willing to enter.

" The first problem, obviously, is to guard against the future criminal designs of the Central Powers, even after they are thoroughly defeated. Without marking time by discussing ' Terms of Peace ' in the middle of the war, we may take it as common ground that they will include provisions for the curtailment of the Germanic machinery for war. And it would be folly to believe that any such curtailment would long be recognized by the Central Powers unless they knew that there was a machinery to put down any new policy of ' preparedness.' The mad dog of Europe must be kept on the chain for many a day."

Mr Robertson goes on to fall rather violently foul of Mr G. Lowes Dickinson because the latter " seems to think it a philosophic proceeding to argue . . . that no power is to blame for this war, but that either all powers alike are to blame, or that the blame is to be laid on the phantom shoulders of the European anarchy, which he gravely arraigns as ' the real culprit.' " Mr Dickinson also comes in for much unfavourable animadversion because it appears to be too great a strain for his academic mind " to realize that what really *must* be done is to treat Germany so far as may be on the principles on which we treat the burglar."

Mr Robertson concludes :

" The practical politician is buttonholed on two sides by typical extremists : the zealots, who propose to divide the world into two hostile trading groups, carrying on an eternal economic war when the bodily war is ended ; and the counter-zealots, who insist that Germany must at once be made a member of the League of Nations to secure peace. . . . If on the side of the Allies there is a widespread disposition to make an end even of trade with the enemy, how is the enemy likely to relate to a system of international machinery for the preservation of peace ? There is far more malice on that side than there has ever been on this, and that malice will be at its height when the war ends adversely to the Central Powers. To propose, then, to make them component parts of a machinery of which the fundamental purpose is to keep them in check is to be merely fantastic, to insist on tabling an impossible theory of action for theory's sake. . . . Given a complete revolution in German polity, some such co-operation might be contemplated ; but who relies upon that ? Sane men

cannot be sure of German sanity, in the ordinary way of evolution, for a generation hence.

" The task of the practical politician, then, will be . . . to take sober safeguarding measures in alliance against the beaten foe, avoiding all measures aiming at superfluous injury."

Here then we find justified in advance (1) the insistence in the Versailles Treaty on Germany's sole responsibility for the war ; (2) the exclusion of Germany from the League, and (3) the consequent system by which the Allies, through the Supreme Council and Ambassadors' Conference or through the League in so far as Germany's exclusion enabled them to dominate that body, attempted to hold Europe in thrall and dictate their ukases to the world, " treating Germany as a burglar " and " keeping her on a chain like a mad dog," to use Mr Robertson's words.

CRUSHING AND DISMEMBERING THE GERMAN EMPIRE ; GERMANS AS WOLVES

The third example, *The Herd Instinct in Peace and War*, by W. Trotter (first published in 1916), is the most illuminating of all. The author is a trained psychologist, and therefore specially equipped to detect and resist such influences as those summed up in the phrase " war mind." Not only that, but as the brilliant and original discoverer of the new aspect of human psychology, called by him " herd instinct," Mr Trotter should have been trebly forewarned and forearmed against " war mind," which, after all, is but a perverted form of the herd instinct.

What Mr Trotter did do is made abundantly clear by the following quotations from his book, in the portion devoted to an examination of the nature and sources of the moral strength of " the two arch-enemies " [England and Germany].

To begin with, Mr Trotter marks out the limits of his own competence. He is not, he says, unprejudiced :

" I admit to myself, quite frankly, my innermost conviction that the destruction of the German Empire is an indispensable preliminary to the making of a civilization tolerable by rational beings."

But by making allowance for this bias, it may be possible to " establish reasonable relations with truth." An external handicap corresponds to the internal bias :

" Those of us who are unable to give time to the regular reading of German publications must depend on extracts which owe their appearance in our papers to some striking characteristics which may be supposed to be pleasing to the prejudices or hopes of the English reader."

Within these self-confessed limits, Mr Trotter sets forth his picture of Germany. Space forbids us to reproduce the study, but Mr Trotter's conclusions are these :

" If, then, we desire to get any insight into the mind and moral power of Germany, we must begin with the realization that the two peoples are separated by a profound difference in instinctive feeling. . . . When I compare German society with the wolf pack, and the feelings, desires and impulses of the individual German with those of the wolf or dog, I am not intending to use a vague analogy, but to call attention to a real and gross identity. . . .

" Between the path England finds herself in and that which Germany has chosen there is a divergence which almost amounts to a specific difference in the biological scale. In this perhaps lies the cause of the desperate and unparalleled ferocity of this war. It is a war not so much of contending nations as of contending species. We are not taking part in a mere war, but in one of Nature's august experiments. It is as if she had set herself to try out in her workshop the strength of the socialized and aggressive types. To the socialized peoples she has entrusted the task of proving that her old faith in cruelty and blood is at last an anachronism. To try them she has given substance to the creation of a nightmare, and they must destroy this werewolf or die."

Given this view of the German people's spiritual nature, what sort of settlement does Mr Trotter propose? This appears in his polemic against

" that small group of accomplished and intellectual writers who from their pacifist and ' international ' tendencies have to some extent been accused, no doubt falsely, of being pro-German in the sense of anti-English."

Their complaint is that the official policy—to crush German militarism—is indefinite, and not attainable merely by the use of military force, however drastically applied :

" We are warned that we should seek a ' reasonable ' peace and one which by its moderation would have an educative effect upon the German people, that to crush and especially in any way to dismember the German Empire would confirm its people in their belief that this war is a war of aggression by envious neighbours, and make revenge a national aspiration.

" Such criticism has not always been very effectually answered, and the generally current feeling has proved disconcertingly inarticulate in the presence of its agile and well-equipped opponents. Indeed, upon the ordinary assumptions of political debate, it is doubtful whether any quite satisfactory answer can be produced. It is just, however, these very assumptions which must be abandoned and replaced by more appropriate psychological principles when we are trying to obtain light upon the relations of two peoples of profoundly differing social types and instinctive reaction."

This psycho-biological difference, says Mr Trotter, is postulated by the " official view " of the war [1] and is instinctively felt by

[1] It was. *Cf.* the late Mr Bonar Law's famous distinction between German nature and human nature.

the man-in-the-street, with whom Mr Trotter associates himself, rejecting " unpractically ferocious root and branch men " [presumably cannibals] on the one hand, and " pacifist intellectuals " on the other, who, says Mr Trotter, lack " invigorating contact with reality," for they proceed on the assumption that the difference in question does not exist.

Mr Trotter then goes on to apply his appropriate psychological principles and demonstrate his invigorating contact with reality in the following terms :

" A psychological hint of great value may be obtained from our knowledge of those animals whose gregariousness, like that of the Germans, is of the aggressive type. When it is thought necessary to correct a dog by corporal measures, it is found that the best effect is got by what is rather callously called a ' sound ' thrashing. The animal must be left in no doubt as to who is the master, and his punishment must not be diluted by hesitation, nervousness or compunction on the part of the punisher. The experience then becomes one from which the dog is capable of learning, and if the sense of mastery conveyed to him is unmistakable, he can assimilate the lesson without reservation or the desire for revenge. However repulsive the idea may be to creatures of the socialized type, no sentimentality and no pacifist theorizing can conceal the fact that the respect of a dog can be won by violence. If there is any truth in the view I have expressed that the moral reactions of Germany follow the gregarious type which is illustrated by the wolf and the dog, it follows that her respect is to be won by a thorough and drastic beating. . . ."

Mr Trotter's mental condition as revealed in this book obviously welcomed in advance any excesses whatever inflicted by the victors on their beaten enemies, and any amount of ruin and desolation as an incident of victory. " Social sadism " would appear the only term adequate to characterize this condition.

Both Mr Jacks and Mr Trotter explicitly state that their ideas are based on information drawn from Allied sources only, and all three writers emphasize the identity of their views with those of the Government and the great mass of their countrymen. Moreover, it must be repeated, these three writers are far above the average in intellect, character and enlightenment—are, indeed, among England's best citizens. If we take war-time " patriots " in the bad sense it is characteristic that of the two most conspicuous—one a peer and both with an unrivalled hold on public opinion during the war—one has since served seven years in jail and the other died a madman. As for the attitude of the Press and politicians, anyone who takes the trouble to go through newspaper files between 1914-1919 will observe that through them all runs the same hot blast of unreason informing the extracts just quoted.

THE WAR MIND AND THE PEACE OF PARIS

All this is a revelation of the state of mind produced by war. The paradox of modern war is that, in order to win, you must reduce the belligerent nations to a condition where they are unfit to make peace. The essence of war is destruction, overcoming resistance, killing, and the strain in modern war is terrific and bears on the whole population. It is a denial of all that makes life worth living, a flat contradiction of the bases on which our civilization ostensibly rests. To nerve the people to endure the hardships and steel themselves for the fearful effort necessary to achieve victory, and turn a blind eye to its vanity, it is essential to " create an atmosphere " by censoring all news and views inimical to the fighting attitude and by " doping " public opinion with appropriate news and views, exhortations, lectures, speeches, sermons, prayers, " fight for right " movements, and the efforts of a sort of auxiliary corps of authors and publicists attached to the official Press bureaux. By the end of the war this system was more or less completely developed in all the belligerent countries and victory had become an end in itself, a red triumph toward which men strained in an agony of blind fanaticism, with no thought of the peace that was to follow.

Thus in England the combative instinct, the native blood-lust that lurks in most men, had been aroused by propaganda, combined with the herd instinct, and fixed in a complex that, in the mass of the British people, was rationalized into a demand for the punishment of Germany through a military victory, as the only way of realizing the reign of peace and good will on earth. On one side of the vast mass of these " moderates " [1] were men who were chronic victims of the murder complex, but who yielded to it frankly, with no attempt to give it a moral twist. These men, subsequently known as " Diehards " (presumably because they were past military age and survived the war unscathed), wanted a military victory, because they wanted annexations and the dismemberment and subjection of the Central Powers. Beyond the " moderates " on the other side was a small group who desired the same kind of Peace as the bulk of their countrymen, but believed it could be obtained only through a drawn war and a negotiated settlement. The event has shown that these men were fundamentally right as to the ultimate meaning of the war and the results of a dictated Peace. But they were not fitted to grapple with the complexities and stubborn difficulties of immediate

[1] In Anatole France's sense—" *Ils étaient trop modérées pour se séparer des violents.*"

problems and lacked sensuous contact with the rest of the nation, partly because the rest of the nation had gone mad, but partly, too, because these people were of the type called cranks. In the upshot, peace was made under the pressure of the "doped" moderates, their strange bedfellows the Diehards, and men whose last refuge was patriotism.

THE NEED FOR THE "PEACE MIND"

The most ominous fact about the war was not the material damage it caused, nor even the loss of life, but the poisoning of men's minds that for years made peace in Europe resemble a deliberate attempt to pull down what remained of civilization. Happily, we are beginning to recover, and to many the memories of war-time moods, such as those revealed in the quotations just given, will appear like a bad dream. But recovery is as yet only partial—it often means only that the ashes of indifference have covered the embers of hatred. We must go the whole way if we are to make a decisive break with the past and start civilization on a new course.[1] We cannot make a real peace until we are purged of the Pharisaism and sadistic cant that constitute the war mind.

[1] In a discussion on different types of mentality, *documents humains* are always more illuminating than any amount of exposition, and I therefore quote two herewith. The first is an account of an interview with Lord Northcliffe that appeared in *Le Figaro* of January 7, 1917:

"France has no better friend than Lord Northcliffe. During nearly every holiday time we see this great leader of the Troops of the Rear stepping with alert foot upon our territory, crossing Paris in a whirlwind, and racing from one front to the other in order to breathe deep draughts of the magnificent air of *la résistance*. How should one be surprised then at the treasures of tenacious and biting energy which make our powerful *confrère*, *The Times*, such a valuable supporter of the policy of Action amongst our neighbours? On the threshold of this new year Lord Northcliffe seems to me to be absolutely radiating his confidence in our victory. . . ."

The second is an extract from "On Leave," a letter in *The Nation* of June 2, 1917, written by a soldier from the front:

". . . If an apparition of the battle-line in eruption were to form over London, over Paris, over Berlin, a sinister mirage, near, unfading and admonitory, with spectral figures moving in its reflected fires and its gloom, and the echoes of their cries were heard, and murmurs of convulsive shocks, and the wind over the roofs brought ghostly and abominable smells into our streets; and if that were to haunt us by day and night, a phantom from which there was no escape, to remain till the sins of Europe were expiated, we should soon forget politics and arguments, and be in sackcloth and ashes, positive no longer, but down on our knees before heaven in awe at this revelation of social guilt, asking simply what we must do to be saved. . . ."

The point is you either hate war with your whole heart as something not only cruel but foul and stupid, or you do not. Lord Northcliffe's state of mind as revealed by the above extract—whose fairness no one who knows Lord Northcliffe's record in war and peace will be disposed to question—is something different in kind, organically on a different plane or psychological level, from the attitude to war of "A Soldier." The difference between the two is somewhat like that between a heathen and a Christian, or between the "once-born" and "twice-born," in William James' phrase. The soldier has had burned into him a whole range of realities, horrors and hopes to which the civilian is as oblivious as a rhinoceros to astronomy.

The beginning of righteousness is abhorrence of self-righteousness. The things we believed we were fighting for can be won only if we realize that war, as a method of gaining them, is not only wicked, but futile. War is a collapse of civilization, not a means of defending it, still less a holy cause. There is no such thing as a war for liberty, or democracy, or justice. These are spiritual things, and the essence of war is hostility to these above all spiritual values. The point is made clearer if we reflect that religious wars had little success, even when one party tried to impose a definite creed, and were ghastly failures when they professed to uphold or further the spirit of Christianity. How, then, are such vague and remote ideals as justice, liberty and democracy to be realized by war?

The most wars can do is to leave a state of flux, out of which conditions may be shaped favourable to democracy, liberty, justice, etc. But war also creates a temper that minimizes the chance of the opportunity being used in the right way. Well-nigh the only good thing that has come out of the war is the revolt it has bred against the causes that brought it about. The League is the one constructive idea this revolt has led to in international relations. Something like a conviction of social sin is the only frame of mind that fits the facts of 1914-1919, and is capable of engendering the passionate revolt against anarchy and slaughter, the living faith in the attempt to substitute law for force that alone can put power behind the idea of a League of Nations. Only through making the League a great reality can we reach the threshold of that better world for which the flower of the world's youth died.

CHAPTER III

THE LEAGUE AND THE POST-WAR WORLD

The Forces unchained by the War

War never creates anything, but hastens and distorts the development of pre-existing tendencies. The world war raised nationalism to the pitch of madness, put a premium on violence and extremism of every kind, and left a host of flaming feuds and hatreds in an exhausted and embittered world. On the other hand, it brought three great military autocracies crashing to the ground, freed a number of small nations, put whole new classes into power, and left men more effectively disgusted with war and readier to try new ways than has ever before been the case.

Reaction and the Fear of Revolution

Thus force and reaction were on top at the Peace Conference, but frightened into some concessions by the spectre of revolution.[1] The liberal elements of world opinion, inspired and led by President Wilson, drove home the argument and extorted the resulting concessions.

Nationalism and the Need for Internationalism

Again the war led to the culmination in a violent and extreme manner of the nationalist movement that had been growing in Europe for over a century. The result was the appearance of a chain of new sovereign states, stretching right across Europe, from Finland in the north to Yugoslavia in the south.

To liberal opinion it has often seemed regrettable that the Allies did not insist at the Peace Conference upon the retention of at least a Customs union between groups of those states (such as the Austro-Hungarian succession states) that were formed out of what had been a single political and economic unit. The absence of any such provisions has certainly contributed to the

[1] Fear of revolution as a motive at the Peace Conference runs through all the accounts of the event. Part XIII. of the Versailles Treaty (the constitution of the International Labour Organization) quite obviously owed its genesis to a desire to avoid revolution. *Cf.* Ray Stannard Baker, *Woodrow Wilson and World Settlement*: "One remembers vividly how the councils at Paris were given no rest, day or night, from hearing the woes of the world; how they were constantly agitated by cries of hunger from without . . . or alarmed by the voices of new wars . . . or distracted by the fierce uprisings of peoples. . . . And at all times, at every turn of the negotiations, there rose the spectre of chaos, like a black cloud out of the east, threatening to overwhelm and swallow up the world. There was no Russia knocking at the gates of Vienna! At Vienna, apparently, the revolution was securely behind them; at Paris it was always with them."

impoverishment and embitterment—what is known as the "Balkanization"—of Europe. But the war lasted at least a year too long for any such consummation. No one could expect the border states to remain on any terms of partnership with Bolshevik Russia, against which the Allies at that time were waging an unofficial war, and which, partly for that reason, was in a state of militant and destructive communism rightly feared by its neighbours. The Austro-Hungarian monarchy, on the other hand, broke and vanished before the Peace Conference was ready to deal with this aspect of the settlement.

But at the same time the war had led to such an increase of interdependence among both sets of belligerents that it was felt the new states could be viable only if they were based on some system of international co-operation and peaceful settlement of disputes, particularly in respect of economic and financial questions, public health, transit and communications, and national minorities.

The Dictated Peace and the Necessity for Compromise and Adjustment

Finally, war nationalism led the Allied and Associated Powers to the enormous arrogance of attempting to *dictate* the Peace settlement to the rest of the world, particularly their beaten enemies. But they speedily found they could not agree among themselves, and that facts were even more stubborn than the swollen heads of would-be dictators. Consequently, they had to leave many points unsettled, make compromises, insert provisions for subsequent modification, and so forth—all matters necessitating continuous international action and permanent international machinery that should function after the Peace Conference had come to an end.

The Genesis of the League

The League of Nations was the product of all these factors—grew, that is, organically out of the needs of the post-war situation and out of the immense dumb hope that the agony of 1914-1919 had not been in vain. At the very outbreak of the war Lord (then Sir Edward) Grey voiced his belief that the only way out was the formation of a League of Nations. Mr Asquith, as Prime Minister, returned to the idea again and again. It was taken up in America and by the European neutrals. League of Nations societies were founded in many countries. Wilson became the mouthpiece of this movement, which soon became so powerful that the idea of a League was put in the forefront of the Allies' war aims, and publicly adhered to by the German Government.

Inter-Allied Dictation versus International Co-operation

But the League was crippled at the outset by the exclusion of the ex-enemies and by the fact that the Allies left the chief questions outstanding to inter-Allied bodies (the Reparations Commission, inter-Allied High Commission in the Rhineland, Supreme Council, Conference of Ambassadors, etc.). Thus there were two sets of international relations and two systems for conducting them—one a system of inter-Allied dictatorship and the other a system of international co-operation. The League was the minor of these two systems, was manned by second-rate men, and given odd jobs to do, while the big problems of the world were dealt with by the Prime Ministers and Foreign Ministers of the Allies through inter-Allied machinery, working free of any such code of obligations as the Covenant.

The situation was aggravated by the state of war and unrest in Europe and Asia Minor, owing to the conflict between the Allies and their protégés on one hand, and Russia and Turkey on the other. As the chief members of the League were the Allies, who themselves were ultimately responsible for the state of war and unrest,[1] the League was paralysed. At that time all the Allies were imbued with the war mind and not one had any real belief in the League.

Meanwhile the United States, who were also infected with the war mind, but of a peculiar " ingrowing " brand, withdrew from the League immediately, not only further weakening that body but aggravating the situation in Europe and disorganizing the machinery for dealing with it. The result was immensely increased difficulty in settling the problems of reparations, debts, security, disarmament, and getting Germany and Russia back into the comity of nations.

The Failure of Dictation

The first five years after the war saw the gradual disillusionment with force of public opinion in most countries and the progressive breakdown of the system of inter-Allied dictatorship. Partly the system was inherently absurd and when pushed to its logical extreme threatened famine and anarchy, whose dangerous results to themselves the Allies averted only by promptly abandoning the system. This was the case in Bulgaria and Austria ; with

[1] This may seem a hard saying, but it must be emphasized once more that the Allies made a particular point of *dictating* the Peace settlement—which they attempted to enforce on Turkey—and intervening in Russia in order to upset the revolutionary regime in that country. They took it upon themselves to be the arbiters of Europe's destinies, and thereby assumed responsibility for the results.

respect to the latter country the Allied change of heart was more complete and the situation is therefore better. Partly the intended victims proved wicked enough to defend themselves successfully when attacked, as in Russia and Turkey. Partly, again, a mixture of submission and stone-walling tactics succeeded, through various vicissitudes, in prolonging the situation from one crisis to another until moderation and common sense got the upper hand in the Allied countries—not however until the treatment meted out to the defeated foe had given the latter's reactionaries and nationalists a new lease of life. Hungary and Germany are cases in point. Lastly, there were minorities in all the Allied countries who had from the beginning disliked violence and been convinced that it would lead to disaster. The course of events strengthened these people by proving them true prophets—this was most clearly the case in Great Britain, where harrying a beaten foe is clean contrary to every interest and most traditions, and soon bore bitter fruit in the shape of 2,000,000 unemployed.

The widening breach between Great Britain and France was the first sign of the new tendencies. The Occupation of the Ruhr was the culmination of the system of inter-Allied dictatorship—it culminated, indeed, in the claim of one Ally to interpret and execute the Versailles Treaty singlehanded, by the use of unlimited violence and in defiance of world opinion.

The breach between Great Britain and France first caused the disappearance of the Supreme Council and then, in the aftermath of the Corfu imbroglio, finally discredited the Ambassadors Conference ; the Occupation of the Ruhr led to the British Government publicly denouncing the Reparations Commission as a mere instrument of Franco-Belgian policy.

The General Election in Great Britain that first put Labour into office, and the repudiation of " Poincarism " by the French electorate, meant the breakdown of the system of dictatorship, meant that France when faced by the choice of exercising force alone in Europe—with the doubtful aid of a handful of small states and amid the gathering disapproval of world opinion—or of seeking security and reparations by a policy of conciliation and co-operation, with the support of her Allies and of liberal opinion all over the world, chose the latter course. That it leads straight to the League is obvious, for the League is nothing but the desire for conciliation and co-operation erected into a system. The Dawes Plan, the Geneva Protocol, Locarno, Germany's

membership of the League, and the idea of a Franco-German rapprochement are steps in the development of this policy.

THE GROWTH OF THE LEAGUE

Meanwhile the League, which started with forty-three members, increased in the first six years to fifty-six, and is enlisting the co-operation of Russia and the United States to an increasing extent. Not only the Peace Treaties but a number of other international conventions and agreements are based in one way or another on the existence of the League—that is, incorporate reference of disputes to League bodies, or postulate the use of League machinery and League guarantees in some other way.

The League has become part and parcel of the post-war world, and cannot be uprooted by anything short of war or revolution, although it may be overshadowed and kept weak so long as the great nations of the world are in hostile camps or content with isolation.

Public opinion, from being ignorant and either millennial or incredulous about the League, is slowly becoming better informed and adopting a more intelligent and practical attitude. That is, the League was looked upon at first as a sort of new Hague Arbitration Court, some sort of committee or institution sitting at Geneva with a message of peace and good will which the nations might or might not heed, but which in any case came to them from outside. Now it is being realized that in the League the nations themselves—our nation and most of the other nations of the world—have pledged themselves to conduct their foreign policies through certain machinery, in certain conferences, and on the basis of certain obligations providing for international co-operation and peaceful settlement of disputes. Whether this effort succeeds or not depends in the last resort on the will of every citizen, but that such pledges should have been implemented, and that such an association of states as the League should actually exist and be working, is something new in the history of the world, something that fifteen years ago every statesman would have declared wildly Utopian.

It is now obvious that in practice the League is the only concrete alternative to fearful militarism, expressed by occupations and irredentisms, and ending in Armageddon. To take only two examples : the French after getting into the Ruhr produced such a state of feeling in Germany that they did not dare to get out until they had received international guarantees—expressed by treaties of assistance, arbitration agreements, international control

and reduction of armaments and the inclusion of Germany in the League—for security. Germany, on her side, could give up the policy of war for redressing her wrongs only because she saw in the League the possibility of a peaceful alternative. Similarly, the minorities' treaties, much as they are disliked by the new states, are their only shield against the irredentism of their great neighbours. In short, the League has now become a necessity, and the only alternative to the League is a state of things far worse than anything that appeared possible before the war.

CHAPTER IV

THE NATURE AND NECESSITY OF THE LEAGUE

War and the Alternative

We have seen that since the war the only practical alternative to inter-Allied dictatorship and military occupation has been continuous, organized, international action, carried out by widening the League's membership and strengthening its authority. The former policy would sooner or later have meant the encirclement, subjection and dismemberment of Germany, splitting up Europe into two camps and, ultimately, a world war with Germany and Russia on one side, the Allies and the new states on the other. This unless, as is more likely, the attempt at pursuing such a policy landed Europe in revolutionary chaos and famine. Similarly, in the long run the only alternative to a state of half-war with Russia, with dangerous repercussions on peace in Europe and the East, is a determined attempt to bring her into the comity of nations. In other words, we are faced either by an aggravation of the old anarchy or by the necessity for developing the alternative. The one thing impossible, the one hopelessly Utopian project to-day, is to muddle back to the state of things before the war, for the two tendencies held in solution in modern civilization—the imperialist tendency and the international tendency—are now crystallizing out. Civilization specializes as it advances, and we must either specialize in preparing for war or in organizing peace.

The Peace-Organizing Tendency

The League is an attempt to build on the peace-organizing tendency, to give formal and binding expression to the interdependence of modern nations. It is the failure to recognize the great fact of interdependence that is, in the final analysis, responsible for the world war and for much of the unnecessary misery afflicting mankind to-day. From this point of view the League is rooted in stark realism, the hardest kind of common sense and clear-headed self-interest.

The League

(a) *Its Essence*

The League of Nations is an association of states that have signed a treaty—the Covenant—pledging them to settle disputes peacefully and co-operate in matters of international concern.

In order to carry out these pledges the States Members of the League meet frequently and regularly in conferences—such as the Assembly and technical conferences—and maintain permanent machinery—such as the Secretariat-General, technical and advisory committees—for preparing and serving these conferences and executing their decisions. The States Members of the League further delegate to a group of their own members, meeting every few months in the League Council, the task of supervising the working of the whole system, subject to the general guidance of the annual Assembly, in which all the States Members are represented on an equal footing. The League has set up the Permanent Court of International Justice to deal with the justiciable aspect of international disputes. In addition, States Members of the League are encouraged to use the League technical committees for mediation of disputes arising out of technical conventions, as well as to set up special arbitration and conciliation commissions, and to avail themselves of The Hague Court of Arbitration. Failing this they must resort to the Council for inquiry or report, unless one party prefers resort to the Assembly.

(b) *Its Background*

The organization of the League is little more than the systematic co-ordination and putting on a permanent basis of the methods of international co-operation and peaceful settlement of disputes that had been growing up before the war—namely, the " Concert of Europe," The Hague Conferences and Court of Arbitration, and the " public international unions " mentioned in the first chapter.

The idea of the League, too, is old, may be traced back for centuries, and is developed at some length in the works of writers in the Middle Ages, in the schemes of Saint-Pierre, Henri IV., William Penn, Tsar Alexander I., Kant, and a host of others. It is itself but a more modern form of the unity of civilization that haunted the minds of the great conquerors, inspired the " universal " religions and combined the two for a time in the concept of the Holy Roman Empire.

What is new is that the idea of unity has, as it were, joined hands with the material necessity for unity pressing up from below, that the pre-war sporadic attempts to organize the world internationally have been combined, modernized and expanded into a vast permanent system ; that fifty-odd states have pledged themselves to work this system ; and that thereby the idea of the unity of mankind has been deliberately expressed in terms of practical

politics, has been brought to earth by binding treaty obligations and clothed in the flesh and blood of institutions. The League is still a tentative and imperfect thing, but it exists, is several years old, and is alive and growing.

Change and Human Nature

The fact that the League exists is in itself a decisive argument against that hoary half-truth, " Human nature never changes," and the false conclusion drawn from it, " therefore wars will never cease." The truth is, war is not a physiological necessity, like sex, but an institution, and willingness to go to war is not an instinct inherent in human nature, but is based upon a complex. Complexes may be defined as centres of feeling and activity set up by a fusion of ideas and instincts, by the impingement of environment on the individual. As our environment changes, ideas and institutions change, and with them our complexes—that is, our motives, the springs of action. Now it is obvious that ideas and institutions do in fact change and vanish continually. Consequently, although we cannot " change " human nature, any more than we can " change " the universal nature of which it is a part, we can and do unceasingly change the *expression* of both to fit the growing needs of human civilization. War as an institution or method is vastly more anti-social, cruel and stupid than, *e.g.*, ritual cannibalism, trial by ordeal, the duel, witch-burning, the Inquisition, and a host of other dead tyrannies and superstitions. So anti-social is it indeed that, if civilization does not put an end to war, war will put an end to civilization.

The League and War

Therefore we not only can, but must, abolish war. The way to do it is to develop the League until it becomes world-wide and supreme in international affairs. This does not mean getting rid of international disputes, but raising them to the plane of discussion and compromise, and keeping them propped up on that plane by obligations so framed as to be directed against a state that attempts to resort to force to impose its view. It means sublimating the balance of power between rival alliances into a balance of policies within the League. When this balance is complete (*i.e.* when all nations become members) a League policy—that is, a policy based on the obligations and machinery of the Covenant —is apt to appear as the only way out of every international dispute. But this development is not only a matter of organization : organization is essential, but behind the organization there must be a public opinion which condemns as barbarous a state resorting

to force and holds that a state gains prestige by promptly and loyally fulfilling its obligations as a member of the League.

The League has provided a sort of lowest common denominator in international politics, an international moral rallying-point for men and women of good will in all countries. States Members of the League must shape their national policies and pursue their separate interests in relation to the great and positive aim, recognized as the common interest of all states, of perfecting the League. The League cannot rise higher than the level of the nations composing it. But it does afford a means by which any improvement in the public opinion of any country may quickly be brought to bear on the whole trend and tone of international relations, and by which any attempt to lower the standard may swiftly and vividly be brought home to the offender.

THE LEAGUE AND CIVILIZATION

In its deepest significance the League is the spearhead in the international field of a movement for recasting civilization, for gaining control in the twentieth century of the forces released by the nineteenth. Since the break-up of the abortive attempt at an organized civilization made in the Middle Ages we have swung far in the direction of anarchy. The philosophy of authority has given way to the philosophy of emancipation. To-day theocracy and monarchy are dead, and aristocracy remains as ever a dream, of which the reality is always, sooner or later, a more or less corrupt oligarchy based on vested interests. To-day the principle of authority is vested in the people, and this is almost as true of religion as it is of politics. To-day, too, the pendulum is swinging back from anarchy to organization, and mankind is groping towards a civilization that shall be functional, not hierarchical—that is, organized, but on the basis of democracy, a civilization where no man is assigned his station according to birth, but where all must find a task for which capacity and training fit them, in the society of which all are equal members.

The abandonment of *laissez-faire*, the growing preoccupation of all parties, and of the public conscience generally, with social and economic issues and with education are signs of this development in home affairs. In foreign politics the founding of the League is the first and greatest sign of the revolt from anarchy. Mankind is groping its way to a new civilization, based on wider and firmer foundations than that which went down in the blood and smoke of battle. The League is the first step toward a world society. If the League is to succeed we must go further along the path

marked out for this generation by the "spirit of the age." We must democratize the conduct of foreign policy, develop a code of international rights and duties, and a system by which this code is applied, and civilize patriotism by bringing it into relation with the concept of humanity and infusing into it the sense of human welfare.

SECTION II

"THE SOLEMN LEAGUE AND COVENANT"

[The first Section gave the background and origin of the League—described the soil out of which it grew and traced its roots. The eight chapters in this Section give an account of its structure and working—the stem, crown and physiology of the tree whose branches already encircle the earth.]

CHAPTER V

THE CONSTITUTION AND MEMBERSHIP OF THE LEAGUE [1]

To anyone looking back on its history the League seems to have grown naturally and inevitably out of the forces that shaped our civilization. We have seen how the Concert of Europe, The Hague Conferences and public international unions appeared as the forerunners, and the world war as the precipitating agent of the League. The main lines of the League were determined years before it was ever thought of. The foundation of the League was little more than an attempt to recognize that international conferences were becoming a regular and frequently recurring part of international practice. The roots of this attempt in the past were deep and manifold; the war forced both sides to "internationalize" to a hitherto undreamed-of extent, and the necessities of the post-war world made organization the only alternative to disaster.

The Covenant is not something wholly new, hardly even a fresh departure.[2] It is the turning-point in the evolution of the world toward international organization. Before the Covenant this evolution was mainly unconscious. After the Covenant it became almost wholly conscious. The Covenant, in its turn, has become the starting-point for a number of new developments in the form of interpretations, amendments and "executive conventions," and by being made a "highest common factor" in a variety of treaties, some technical, some political, others dealing with arbitration or mutual guarantees of support against aggression.[3]

The object of the framers of the Covenant was to lay hold of pre-war beginnings in order to meet post-war necessities—to expand, consolidate and co-ordinate previous attempts, rivet them to an international treaty, and bring the whole into intimate relations with present-day realities. Consequently, there is very little

[1] On the subject of the framing of the Covenant see David Hunter Miller's standard work, *The Drafting of the Covenant* (2 vols.), which appeared in June 1928, when this book was already in proof.

[2] *Cf.* the following passage from Ray Stannard Baker, *ibid.*, vol. i.: "Practically nothing—not a single idea—in the Covenant of the League was original with the President [Wilson]. His relation to it was mainly that of editor or compiler, selecting or rejecting, reclassing or combining the projects that came to him from other sources. . . . All the brick and timber of the structure was old—as old as the Articles of Confederation and the Constitution—older by far!"

[3] See below, pp. 346-347.

new in the League, although the League itself is new. Founding the League was in essence a pledge—a "solemn league and covenant"—by the Powers concerned to seek peace and ensue it. The methods by which the pledge was to be honoured were based on what had already been done or attempted in the past, although these methods were combined for the first time into a complete and coherent system. The pledge to apply this system alone is new and of prime importance.

But while it is necessary to realize how "organically" the League has grown out of the past, it is equally necessary to appreciate the greatness of the innovation, of the sheer creative effort out of which it was born. History has a trick of making off-chances look like inevitable consequences in retrospect, by leaving out the clash of opposing possibilities, the elements of faith and thought, the sense of choice felt by those who selected a certain line of conduct out of the many that opened out before them. To have a better grasp of reality it is therefore necessary to go more deeply into the immediate origins of the League during the war and at the Peace Conference and thereby gain a livelier sense of how much effort, sacrifice and overcoming of obstacles by human skill and ingenuity and co-operation of men and women in many lands were necessary to bring this seemingly inevitable result into existence at all. On this subject Temperley [1] writes as follows:

"Future historians, tracing the origin of the League of Nations, will doubtless examine the writings of essayists, the schemes of peace societies, and the speeches of statesmen, and will point out, article by article, how the main lines of the Covenant took gradual shape through study, discussion and propaganda before it became the subject of official negotiations at Paris. The embryology of ideas is a science much in vogue, but for the purpose of this chapter it is of more importance to point out the connexion between the chief provisions of the Covenant and the immediate preoccupations of statemen during the War. The League of Nations as constituted at Paris probably owed less than is generally supposed to its intellectual forerunners, though it owed much to general popular aspirations and idealism. The creative force behind it was the passionate hatred of war, but the practical problem how war could best be avoided or diminished, having in view the inveteracy of nationalist feeling, was presented for solution to men who for four and a half years had been absorbed in crushing administrative tasks. Such men learn mainly, not from books, but from experience. During these years experience had forced three main ideas upon Western statesmanship, and these became the foundation of the Covenant. . . . In the first place, the course of negotiations in the twelve days immediately preceding the outbreak of war drew attention to the need for some settled Council of the Nations responsible for the maintenance of peace. . . . In the second place, the violation of Belgium demonstrated the need for a more comprehensive guarantee of the safety of small nations than

[1] *History of the Peace Conference of Paris*, vol. ii., pp. 21-22.

could be furnished by incidental treaties between a group of Powers.[1] . . . Finally, the increasing exhaustion of Allied resources during the later stages of the War forced upon the Allies a co-operation not merely in the formulation of broad policies, but in the detailed administrative execution of such policies. National resources, instead of being made the subject of general agreements between statesmen, were actually, in a measure, pooled under the joint management of international bodies. From the experience thus gained, it began to be realized how great were the possibilities of such co-operation, how meaningless had been many of the economic rivalries which had divided nations in the past and how beneficial in a practical way, apart from any question of conciliation or the settlement of problems of high policy, might be an organized system of international administration in affairs of common interest to all nations. Moreover, experience during 1917 and 1918 showed that inter-Allied bodies tended to succeed or fail in proportion as they were provided with efficient secretariats capable of carrying out the detailed administrative work entailed by the policy laid down at periodical meetings." [2]

This view of the origin of the Covenant, it may be suggested, while important, is a shade too theoretical in its description of the practical men drawing ready-made ideas all hot and steaming from the cauldron of experience. The war and the pressure of public opinion no doubt stirred them to action and suggested " slogans," but when it came to ideas and plans they relied mainly, as the following pages will show, upon their experts, who in turn drew upon history, books and " theory " as much as recent experience. To learn from experience you have to digest it by *thinking* about it, and this is hardly possible to men " absorbed in crushing administrative tasks " ; so-called " practical " men, so far from being mentally autonomous, are little more than blind agents obeying forces they do not understand. They appear to their own generation as the makers of history and to posterity as its slaves.

ORIGINS OF THE COVENANT

The British Root

The Covenant in the form given it at the Peace Conference was largely an Anglo-American project. Its origins in England must be sought in the more or less conscious attempt to get away from the balance of power by developing the latter into some sort of league or concert or association of nations. As far back as 1905 Sir Henry Campbell-Bannerman proposed, in outlining the policy of the new Liberal administration, the creation of what he termed " a league of peace." In 1911 Sir Edward (now Lord) Grey, the Liberal Foreign Minister, made a great speech, predicting that the race in armaments would lead to either revolution or war, and

[1] See pp. 324-326 for further comment on this point. [2] See pp. 108, 163.

declaring that the only way out was to put an end to the system of rival alliances and to establish some sort of comity or concert of nations. At the time of the London Conference, ending the Balkan crisis in 1912, Sir Edward Grey again returned to this idea, and endeavoured to revive the European Concert and reconstitute it as an international organ for the joint settlement of the problems threatening the peace of Europe. Throughout the years preceding the war, while the Government was getting more and more deeply entangled with one of the two rival alliances and more and more agonizingly aware of how the menace of these alliances was growing, and the shadow of war over Europe lengthening and darkening, it made numerous unsuccessful attempts to reverse the course of development and bring together the potential enemies by reviving the Concert of Europe. The terrible twelve days preceding the war were the scene of futile efforts to revive the concert, and ended with Sir Edward Grey's famous offer, repeated in the House of Commons, that if the crisis passed without collapsing into war the British Government would use the period of relief and relaxation of tension that followed in order to create some machinery for promoting joint consultation among all the Great Powers in order to avert the recurrence of such dangers.

In other words, from the British point of view, the chief thing to make certain of in future was that Powers engaged in a dispute should be bound to discuss it at a conference and to observe a period of delay before engaging in hostilities, so as to let public opinion and outside Powers exercise a pacifying and mediating influence. The world war had, as it were, taken the world by surprise, because there was no obligation on the Powers concerned to meet in order to discuss their differences and to treat their quarrel as a matter of general concern. Therefore, from the British point of view, there must, above all, be provision for compulsory delay and discussion.

The American Root

In the United States President Wilson, in his first annual message to Congress (delivered December 2, 1913), had warmly welcomed the "many happy manifestations . . . of a growing cordiality and sense of a community of interests among the nations" and "their willingness to bind themselves by solemn treaty to the processes of peace, the processes of frankness and fair concession." He had great faith in consultation and in broad moral pledges, and was a strong advocate of international co-operation. He had a contempt for lawyers and the legal attitude in general, and dis-

trusted what he called " mere machinery." [1] Therefore his famous peace proposals in the spring of 1913, which gave rise to the so-called Bryan Treaties, contained no provision for arbitration. The sole object of the treaties is to allow a " cooling-off period " of one year during which the signatory Powers undertake to abstain from war and to submit their quarrel to impartial investigation.

The second clue to President Wilson's subsequent policy may be found in his attempts to convert the Monroe Doctrine from its present status of a unilateral declaration by the United States Government of a sort of potential protectorate over South America into an equal partnership of all the American nations. For this purpose he invoked the aid of the ABC Powers [2] in his dispute with Mexico—an innovation which caused a sensation at the time, for public opinion was not accustomed to seeing the United States treat Latin American Powers as equals to be consulted in its disputes with one of them. For this purpose, too, he proposed and discussed with representatives of Latin American nations a draft treaty (during the first two years of the war), providing that " The High Contracting Parties to this solemn covenant and agreement hereby join one another in common and mutual guarantee of territorial integrity and of political independence under republican forms of government."

He was, no doubt, also influenced by the history of the United States. By Article 3 of the Articles of Confederation, it will be remembered, the original thirteen colonies bound themselves to " assist each other against all force offered to or attacks made upon them or any of them," while by Article 4, Section 4, of the Constitution, " the United States shall guarantee every State in

[1] *Cf.* below, pp. 78-79, and Mr Robert Lansing's plaintive remarks: " The other reason for not consulting me, as I now realize, but did not at the time, was that I belonged to the legal profession. It is a fact, which Mr Wilson has taken no trouble to conceal, that he does not value the advice of lawyers except on strictly legal questions, and that he considers their objections and criticisms on other subjects to be too often based on mere technicalities, and their judgments to be warped by an undue regard for precedent. . . . Mr Wilson also said with great candour and emphasis that he did not intend to have lawyers drafting the treaty of peace. . . . the President's sweeping disapproval of members of the legal profession participating in the treaty-making seemed to be, and I believe was, intended to be notice to me that my counsel was unwelcome. Being the only lawyer on the delegation I naturally took this remark to myself, and I know that other American Commissioners held the same view of its purpose " (Robert Lansing, pp. 41 and 107, *The Peace Negotiations*). Mr Lansing on the subject of Woodrow Wilson, it may be remarked in passing, sounds rather like the Spoonerville Trolley trying to make a noise like an express; he also appears as the kind of man that cannot take a hint unless it is delivered with a meat-axe. Nevertheless it would have been well for the world if the President had occasionally taken his advice.

[2] The South American Great Powers—*i.e.* Argentine, Brazil and Chile.

this Union a republican form of government and shall protect each of them against invasion."

In his mind the League was, as it were, a world-wide extension of the Monroe Doctrine in the form he would like to have given it and an application of the principles of the American Constitution. The President, on numerous occasions, expressed his view that the League was simply the application to the whole world of the doctrine of Monroe. His fundamental idea of the League was well expressed in Point 14 of his famous address to the joint session of Congress on January 8, 1918, which the Allies ostensibly adopted as the basis of their peace policy : " A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike."

It was this idea that led the President to insist upon the " positive " or " affirmative " guarantee in Article X. of the Covenant as the keystone of the structure. The extent to which this was the case and the President's reasons for this view are explained sympathetically by Ray Stannard Baker in *Woodrow Wilson and World Settlement*, unsympathetically by Robert Lansing, the President's adhesive Secretary of State, in *The Peace Negotiations*, and impartially by Bruce Williams in *State Security and the League of Nations*.[1]

Lansing shows [2] how the other members of the American delegation agreed with him in disapproving of the idea of an " affirmative " guarantee. Instead, Mr Lansing proposed three paragraphs,[3] by which contracting parties undertook not to violate each other's territorial integrity and political independence, to outlaw a state resorting to war in defiance of this obligation by the abrogation of all treaties and all legal and economic relations with such state, and to consult as to what further steps might be taken against it by the League.

The same idea was proposed by the President's legal advisers, Messrs David Hunter Miller and Auchincloss, who, after strongly criticizing the proposed form of guarantee on the ground that it " would destroy the Monroe Doctrine," and that " any guarantee of independence and integrity means war by the guarantor if a breach of the independence or integrity of the guaranteed State

[1] See Volume II. for a full discussion of Article X., and also W. E. Rappard, in *The Problems of Peace* (Proceedings of the Geneva Institute of International Relations, 1926), particularly pp. 21-23.

[2] *Op. cit.*, pp. 79, 123-124.

[3] *Op. cit.*, pp. 53-54.

is attempted and persisted in," proposed instead the following text: "Each Contracting Power severally covenants and guarantees that it will not violate the territorial integrity or impair the political independence of any other contracting Power." This was, textually, almost identical with Lansing's proposal, and accompanied by similar suggestions for the severance of relations with an offending state.

These ideas are interesting because in them may be traced the germ of the movement in the United States, associated with the names of Professor Shotwell and David Hunter Miller himself, as well as Senator Capper, for so-called "permissive" or "negative" sanctions, and particularly an undertaking by the United States not to raise objections to a pacific blockade and boycott carried out by the League against a state condemned as an aggressor.[1]

Moreover, as will be shown in Volume II.,[2] there is a growing tendency within the League to interpret Article XVI. of the Covenant in this sense—that is, as binding the members of the League to cut off all relations with an aggressor—while Article X. has sunk into a position of secondary importance and is looked upon as merely stating, in the form of a general principle, the obligations worked out in subsequent Articles (XI.-XVII.).[3]

It is a melancholy and ironic reflection that Wilson fought literally to the death, and America went out of the League, for a text that has since come to mean what its opponents wished to substitute in its place in order fully to safeguard American interests!

French Ideas

France has not had the same influence on the origin of the League as she had on its growth and development. It is true that Senator Leon Bourgeois, her delegate on the League of Nations Commission of the Peace Conference, had written a book, as far back as 1910, called *La Société des Nations*, and had throughout his long and distinguished career as a statesman devoted himself indefatigably to the cause of international peace through international co-operation and the peaceful settlement of disputes. But France during the war was perhaps the most intensely belligerent of all the belligerent Great Powers. She was invaded and fought

[1] See Volume II., and below, pp. 352-353, footnote.

[2] See also below, pp. 113, 361-363.

[3] *Cf.* the remark of the British Government in its memorandum on Arbitration and Security submitted to the League Committee for considering these questions, at its meeting of February 1928: "His Majesty's Government . . . regard the Article [X.], while of great sanctity, as the enunciation of a general principle, the details for the execution of which are contained in other Articles of the Covenant."

in and over by four of the principal armies engaged in the world war. It was natural that her statesmen and public opinion should feel the war more passionately and immediately than her chief allies, although it was tragic that the more generous and clear-sighted elements in French political thought should have been well-nigh stifled during the critical years that the League was established.[1]

France's main contribution was the idea of alliances and military assistance. Even the extremest French nationalists had no belief in national self-sufficiency, and were willing to sink a good deal of their own sovereignty provided they got binding assurances of immediate and effective assistance in case of need. This attitude, which on the Right during the Peace Conference was expressed in the demand that the rest of the world should at any cost in blood and treasure ensure for France her post-war possessions, has since taken the form on the Left of a belief in something vaguely referred to as a Super-State, by which is meant an approach to a European Confederation and drastic all-round curtailment of sovereignty. The main effect at Paris of this attitude was rather to weaken the League and load it with unwelcome and embarrassing commitments and obligations than to promote its development, but the implications and potential importance of the French practical disregard for sovereignty are great.

War Developments

After the outbreak of the war a number of societies and organizations sprang up, chiefly in Great Britain and America (the League of Nations Society, League of Free Nations Society, League to enforce Peace, etc.), but also in France, in the neutral countries, and later in Germany, to promote the idea of a League of Nations and give it definite form. Several writers—among whom may be mentioned particularly H. N. Brailsford, L. S. Woolf and G. Lowes Dickinson—published books which were of great help in clarifying public opinion and giving it a definite basis for constructive thinking upon the problem.

[1] *Cf.* Rappard, "The League of Nations as a Historical Fact," in *The Problems of Peace* (Proceedings of the Geneva Institute of International Relations, 1926), p. 36: "While only feebly arguing in favour of a more democratic and juridical form of the League organization, of the absolute prohibition of war and of compulsory arbitration, which were provided for under the French draft, but probably not prescribed by his official instructions, Bourgeois in fact insisted only on the exclusion of Germany, on the choice of Brussels instead of Geneva as seat of the League, and above all on the importance of military sanctions and the necessity of establishing an international general staff. He was fully successful only in limiting the membership of the League to allied and neutral Powers, not a particularly constructive achievement nor a very happy one, as subsequent developments have shown."

In England, Mr Asquith and Sir Edward Grey put the idea of the League well into the forefront of British war aims, and after the upsetting of the Liberal Cabinet by Lloyd George and the advent of the Coalition the good work was carried on by Lord Robert Cecil, who had from the beginning been one of the wisest and most devoted advocates of a League of Nations.

Lord Robert Cecil, very shortly after he became Blockade Minister in the Coalition Government in 1916, circulated a minute in the Foreign Office suggesting the immediate appointment of an inter-departmental committee to prepare a draft of some agreement between nations for the maintenance of peace by obligations not to go to war before bringing the dispute concerned before a conference, and to take measures in concert against a state infringing the obligation to submit its dispute to delay and discussion. The suggestion that in this way a definite policy should be worked out to give effect to Mr Asquith's and Sir Edward Grey's proposals was approved, and a committee set up under the chairmanship of Lord Phillimore.

The Phillimore Report and Draft

The report of this committee was forwarded to one or two of the Allied Governments, and may perhaps have been instrumental in influencing the French to set up the so-called " Bourgeois Committee " to prepare the French draft for a league.

The extent to which the Phillimore Report, itself the basis for all the subsequent drafts which were used in framing the Covenant, was based on past experience, and how far it was indebted to the books and schemes of the private persons and organizations which began to study this problem from the outbreak of the war, may be gathered from the following quotation :

" We have held nine meetings in which our attention has been directed mainly to the various proposals for a League of Nations which were formulated in the sixteenth and seventeenth centuries and to those which have been put forward since the recent revival of the movement.

" With regard to other methods of international combination for avoiding war which were actually attempted during the nineteenth century, we have not completed our investigation, and without further inquiry into past political experience we would offer no opinion as to whether a modification of those methods or a formal League of Nations is the more promising means of securing the end in view.

" The earlier projects, which aimed at setting up a kind of European Confederation with a supernational authority, we have after consideration rejected, feeling that international opinion is not ripe for so drastic a pooling of sovereignty, and that the only feasible method of securing the object is by way of co-operation, or possibly a treaty of alliance on the lines of the more recent schemes.

" We have accordingly carefully considered those schemes, all of which substitute, in place of the earlier idea of confederation, a system working by means of a permanent conference and an arbitral tribunal. None of them, however, in their entirety appears to your Committee to be practicable or likely to meet with acceptance. We have, therefore, drafted a Convention in which, while embodying their leading ideas, we have endeavoured to avoid their more obvious stumbling blocks." [1]

The nature of the draft referred to in this quotation is clearly brought out in the following passage of the same report :

" The primary object of the proposed alliance will be that whatever happens peace shall be preserved between members of the alliance. The secondary object will be the provision of means for disposing of disputes which may arise between the members of the alliance. Our draft treaty, therefore, divides itself into four parts : Articles 1 and 2, which stand very much by themselves, are to provide for the avoidance of war ; Articles 3-12, for the pacific settlement of international disputes. . . . The mutual covenant not to go to war is contained in Article 1. We have not covered all cases. We have provided that no State shall go to war without previously submitting the matter to arbitration or to the Conference of the League, nor while the discussion is pending in debate, nor shall seek any further satisfaction than that which the award or the recommendation of the Conference requires. This leaves untouched the case in which the Conference can make no recommendation, but we are in great hope that this event will be rare. There will be every inducement to the Conference to find a mode of escaping from war, and, at any rate, the time will be so long drawn out that passions will have cooled. The other case omitted is when a State that has given cause of offence refuses to abide by the award or the recommendation of the Conference. It might be suggested that in this case the whole power of the League should be used to enforce submission, but we felt a doubt whether States would contract to do this, and a still greater doubt whether, when the time came, they would fulfil their contract. Most of the writers on this subject have hesitated to recommend such a provision."

It will be noted that this draft provides in the first place for the avoidance of war, or, more accurately, for delay and discussion before resort to war, and treats the peaceful settlement of disputes as a secondary matter. By agreement between the parties disputes may be referred to arbitration, whereas either party has the right to bring a dispute before the Conference of the League, which is the only organ mentioned in the draft. The members of the League are obliged to coerce only another member that resorts to war against the state accepting a unanimous (excluding the parties) report of the Conference or an arbitral decision, or without observing the period of delay and discussion. The idea that there should be a " moratorium " on warlike preparations during the period of delay and discussion was deliberately rejected

[1] From the text of the Phillimore Report, as reproduced in Ray Stannard Baker, *ibid.*, vol. iii.

on the ground that it would be difficult to ascertain what were special warlike preparations and that the most peaceful state which had not kept its armaments up to a high pitch ought to have a chance to improve them during the period of the moratorium, " in this way discounting to some extent the advantages which a State which kept up excessive armaments would otherwise have had." [1] The question of coercing a state which, while not resorting to war, refuses to comply with a League award, is considered and rejected on the ground that states would hardly contract to do this, and if they did would be even less likely to fulfil their contract when the time came. If a state member of the League were attacked by a state non-member it would be open to the other members of the League to go to its assistance or not, just as they chose. The framers of the report remarked that whereas British writers on the subject were in favour of such assistance being compulsory when the outside Power had refused to submit its case to an appropriate tribunal or council, such a provision had in general been omitted by American speakers or writers, and might therefore be objected to if inserted in the draft.

It is necessary to emphasize how completely this draft approaches the problem from the peace-preserving and political, not justice-making and juridical, point of view, and how entirely attention is concentrated on the problem of preventing and penalizing hasty resort to war. The authors, in their own words, have desired to make the sanction against resort to war

" as weighty as possible. We have, therefore, made it unanimous and automatic and one to which each State must contribute its force without waiting for the others, but we have recognized that some States may not be able to make, at any rate in some cases, an effective contribution of military or naval force. We have accordingly provided that such States shall at the least take the financial, economic and other measures indicated in the article."

It is evident to anyone who compares these provisions with those of the final Covenant that the fundamental lines of the League are little more than a clarification and elaboration of the guiding principles in the Phillimore Report and draft.

Colonel House's Draft

The Phillimore Report was also communicated to President Wilson, who discussed it with Colonel House, and finally asked the latter to draw up a new draft of a " covenant "—the word was first used in this connexion by President Wilson—on the basis of this discussion and with the aid of the Phillimore Report.

[1] From the text of the Phillimore Report, as reproduced in Ray Stannard Baker, *ibid.*, vol. iii.

Whereas the Phillimore draft and the report explaining it were chiefly concerned with pledging the High Contracting Parties to coerce a state that refused to submit a dispute to delay and discussion before resorting to war, and did not provide any complete system for settling disputes, Colonel House provided in his draft [1] for the peaceful settlement of all disputes by methods curiously resembling those laid down in the Geneva Protocol of September 1924—a fact to which Colonel House is wont to refer with pride. According to the House draft there should be an international court which

"shall have jurisdiction to determine any difference between nations which has not been settled by diplomacy, arbitration or otherwise, and which relates to the existence, interpretation or effect of a treaty, or which may be submitted by consent, or which relates to matters of commerce, including in such matter the validity or effect internationally of a statute regulation or practice."

The Contracting Powers agree that "all disputes between or among them or any of them of any nature whatsoever," not settled by diplomacy or through the Court,

"shall be referred for arbitration before three arbitrators, one to be selected by each party to the dispute and one to be chosen by two arbitrators so selected, or in the event of their failure to agree to such choice, the third arbitrator shall be selected by the Delegates.

"The decision of the arbitrators may be set aside on the appeal of a party to the dispute, by a vote of three-fourths of the Delegates, if the decision of the arbitrators was unanimous, and by a vote of two-thirds of the Delegates if the decision of the arbitrators was not unanimous, but shall otherwise be finally binding and conclusive.

"When any decision of the arbitrators shall have been set aside by the Delegates, the dispute shall again be submitted to arbitration before three arbitrators, chosen as heretofore provided, but none of whom shall have previously acted as such, and the decision of the arbitrators upon the second arbitration shall be finally binding and conclusive without right of appeal."

The House draft also provides for an international secretariat and reduces coercion to economic pressure only (boycott and blockade).

In his covering letter to the President, Colonel House wrote: "In the past I have been opposed to a court, but in working the matter out it has seemed to me a necessary part of the machinery. In time the court might well prove the strongest part of it." This conviction was apparently the result of conferences with Elihu Root, former Republican Secretary of State, one of America's greatest jurists and the head of the American Delegation to The

[1] Given in full by Ray Stannard Baker, *ibid.*, vol. iii.

Hague Conference, but was not shared by President Wilson, who, in using the House draft as the basis for his own first draft, conspicuously failed to include in it any provision for a court. Wilson, in fact, added to his general distrust of lawyers a particular dislike of Elihu Root.

THE FIRST WILSON DRAFT

Instead of a court Wilson kept the "political" system of settling disputes devised by Colonel House—and it will be noted that arbitration is used in Colonel House's draft in the loose sense of the Geneva Protocol and not in the classic sense of The Hague Arbitral Convention.[1] In the first Wilson draft the peaceful settlement of all disputes is provided for as follows :

"*Article V.*—The Contracting Powers agree that all disputes arising between or among them, of whatever nature, which shall not be satisfactorily settled by diplomacy, shall be referred for arbitration to three arbitrators, one of the three to be selected by each of the parties to the dispute, when there are but two such parties, and the third by the two thus selected. When there are more than two parties to the dispute, one arbitrator shall be named by each of the several parties and the arbitrators thus named shall add to their number others of their own choice, the number thus added to be limited to the number which will suffice to give a deciding voice to the arbitrators thus added in case of a tie vote among the arbitrators chosen by the contending parties. In case the arbitrators chosen by the contending parties cannot agree upon an additional arbitrator or arbitrators, the additional arbitrator or arbitrators shall be chosen by the Body of Delegates.

"On the appeal of a party to the dispute the decision of the arbitrators may be set aside by a vote of three-fourths of the Delegates in case the decision of the arbitrators was unanimous, or by a vote of two-thirds of the Delegates in case the decision of the arbitrators was not unanimous, but unless thus set aside shall be finally binding and conclusive.

"When any decision of arbitrators shall have been thus set aside the dispute shall again be submitted to arbitrators chosen as heretofore provided, none of whom shall, however, have previously acted as arbitrators in the dispute in question, and the decision of the arbitrators rendered in this second arbitration shall be finally binding and conclusive without right of appeal."

The rest of the President's draft also closely followed the lines of Colonel House's modifications of the Phillimore Report, except that the use of other than economic pressure was permitted in order to coerce an aggressor.

Colonel House's text guaranteeing territorial integrity and political independence was adopted in different wording, as follows :

"*Article III.*—The Contracting Powers unite in guaranteeing to each other political independence and territorial integrity ; but it is understood between

[1] See Chapter IX., on "International Law," and the chapter in the second volume on "The Peaceful Settlement of Disputes."

them that such territorial readjustments, if any, as may in the future become necessary by reason of changes in present racial conditions and aspirations or present social and political relationships, pursuant to the principle of self-determination, and also such territorial readjustments as may in the judgment of three-fourths of the Delegates be demanded by the welfare and manifest interest of the peoples concerned, may be effected, if agreeable to those peoples; and that territorial changes may in equity involve material compensation. The Contracting Powers accept without reservation the principle that the peace of the world is superior in importance to every question of political jurisdiction or boundary."

General Smuts' Draft and the Cecil Plan

On reaching Europe, President Wilson studied two documents (a brief memorandum and a draft) prepared by Lord Cecil, and General Smuts' famous pamphlet, *The League of Nations—A Practical Suggestion.* The Cecil documents were based on the Phillimore Report and in their turn foreshadowed the final British draft described below, and so do not need special consideration except to say that they mentioned for the first time the desirability of various forms of non-political co-operation (in technical and humanitarian matters). The Smuts' pamphlet, while also based on the Phillimore Report, was inspired by a new conception of what the League should be. Smuts wrote in his foreword:

"My reflections have convinced me that the ordinary conception of the League of Nations is not a fruitful one, nor is it the right one, and that a radical transformation of it is necessary. If the League is ever to be a success it will have to occupy a much greater position and perform many other functions besides those ordinarily assigned to it. Peace and war are resultants of many complex forces, and those forces will have to be gripped at an earlier stage of their growth if peace is to be effectively maintained."

This conception, which had been gradually growing in Great Britain, largely as a result of experience in inter-Allied administration and co-operation during the war, was reflected in the Cecil plan and in the official British draft described below, but was strongly emphasized by General Smuts and given a quite new application. General Smuts argued that, in addition to international co-operation, notably in the economic field, the League must assume great burdens of government by becoming

"the reversionary in the broadest sense of these empires [Germany, Austria-Hungary, Russia and Turkey]. . . . In this debacle of the old Europe the League of Nations is no longer an outsider and stranger but the natural master of the house . . . it is not improbable that the supervision of the European States will impose the heaviest task of all upon the League of Nations, at any rate for this generation. But it will have to be performed efficiently, as there is little doubt that the old historic feuds surviving among the nationalities may easily become a fruitful source of war danger. If the League is ever to be a reality

it will have to succeed in this great task. And it will succeed if it takes itself seriously, and looks upon itself not as a merely nominal but as a really live active heir to the former empires, and is determined to discharge the duties of the great beneficent position which has devolved upon it as the supreme guardian of humanity."

This task of supervision or administration, Smuts suggested, might be performed either by the League directly or on its behalf by certain so-called mandatory states—that is, states who perform the task as a mandate or charge from the League and in the name of the League.

In the matter of arbitration General Smuts went further than Lord Cecil, in that he proposed compulsory arbitration for all justiciable disputes, but otherwise closely followed the lines of the Phillimore Report and Cecil plan.

On the question of organization, again, General Smuts made a big contribution to the gradually evolving idea of a league by suggesting that the League should consist of a General Conference, a Council and courts of arbitration and conciliation. The General Conference, which subsequently became the Assembly, has since taken much the form proposed by Smuts, except that the latter's five delegates for each member, proposed in the interests of democracy, have shrunk to three in the Covenant and been expanded to six (three delegates and three vice-delegates) in the practice of the Assembly.

The Council, he suggested,

" will consist of the Prime Minister or Foreign Secretaries or other authoritative representatives of the Great Powers, together with representatives drawn in rotation from two panels of the middle Powers and the minor States respectively, in such a way that the Great Powers have a bare majority. A minority of three or more can veto any action or resolution of the Council. . . .

" The Council will meet periodically and will, in addition, hold an annual meeting of Prime Ministers or Foreign Secretaries for a general interchange of views, and for a review of the general policies of the League. It will appoint a permanent secretariat and staff, and will appoint joint committees for the study and co-ordination of the international questions with which the Council deals, or questions likely to lead to international disputes. It will also take the necessary steps for keeping up proper liaison, not only with the Foreign Offices of the constituent Governments, but also with the mandatories acting on behalf of the League in various parts of the world."

As regards disarmament, Smuts suggested the abolition of compulsory military service, fixing of the defence forces and direct military equipment and armament of the member states by the Council after expert inquiry, the nationalization of all factories for the production of direct weapons of war and their inspection

by officers of the Council, and a periodical furnishing to the Council of returns of imports and exports of munitions of war into or from the territories of its members and, as far as possible, of other countries.

THE SECOND WILSON DRAFT

After careful consideration of this material, and especially of the Smuts' pamphlet, with which he was greatly struck, President Wilson prepared a second draft of the Covenant, the first draft to be printed and circulated and, therefore, often erroneously described as his first draft. In this draft he took over the idea of the organization of the League from Smuts, calling his General Conference " the Body of Delegates " and stating that

" all actions of the Body of Delegates taken in the exercise of their functions and powers granted to them under this Covenant shall be first formulated and agreed upon by an Executive Council, which shall act either by reference or upon its own initiative and which shall consist of the representatives of the Great Powers together with representatives drawn in annual rotation from two panels, one of which shall be made up of the representatives of the States ranking next after the Great Powers and the other of the representatives of the minor States (a classification which the Body of Delegates shall itself establish and may from time to time alter), such a number being drawn from these panels as will be but one less than the representatives of the Great Powers ; and three or more negative votes in the Council shall operate as a veto upon any action or resolution proposed."

He also added Smuts' compulsory arbitration of justiciable disputes to his own rather complicated system for the " political " settlement of all other disputes.

Whereas Smuts applied his very full " mandates " provisions to the " peoples and territories formerly belonging to Russia, Austria-Hungary and Turkey," Wilson applied the same system to " the peoples and territories which formerly belonged to Austria-Hungary and to Turkey . . . and the colonies formerly under the dominion of the German Empire." Both in his and the Smuts draft great stress was laid on mandatory control being exercised only with the consent of the populations concerned and by a state agreeable to them, and it was further stipulated that the mandatory state or agency should " in all cases be bound and required to maintain the policy of the open door or equal opportunity for all the signatories of this covenant in respect of the use and development of the economic resources of such people or territory."

In the case of disarmament, again, the Smuts provisions, as regarded the abolition of conscription and private manufacture and fixing of the world's armaments, were added in a modified

form to Wilson's own proposals, most of which appear in the final text of the Covenant.

Wilson added an article on seeking " to establish and maintain fair hours and humane conditions of labour," which Ray Stannard Baker ascribes to direct labour influence—*i.e.* the same influences as ultimately produced Part XIII. of the Peace Treaty [1]—but which may also have been a recognition of the necessity of co-operation in non-political and technical matters, so strongly emphasized in the Cecil and Smuts schemes. It is rather strange, however, that in Wilson's second draft there is only this rather special application of this idea ; this would seem to strengthen the view that it was difficult to get the President interested in economic and technical questions.

The second Wilson draft further contained an article stating that :

" The League of Nations shall require all new States to bind themselves, as a condition precedent to their recognition as independent or autonomous States, to accord all racial or national minorities within their several jurisdictions exactly the same treatment and security, both in law and in fact, as is accorded the racial or national majority of their people."

The origin of this clause seems to have been representations by Jewish organizations, which always put their case on the same footing as that of other racial or national minorities in the East European countries. Ray Stannard Baker mentions Article 8 (Article XI. of the Covenant) of the second Wilson draft in connexion with the minorities paragraph just quoted, suggesting that, in establishing the friendly right of any nation to call the attention of the Council to " any circumstance anywhere which threatened to disturb international peace or the good understanding between nations," Wilson was thinking of the right of, *e.g.*, Lithuania or Yugoslavia to bring before the League questions concerning the treatment of their kinsmen in Poland or Italy—and the right of the United States to bring up questions of the treatment of the Jews anywhere. He further suggests that this article, often referred to by Wilson as his favourite article, was also thought of as a set-off giving flexibility to Article 10, which, as we have seen, is very carefully framed in the Wilson and House drafts so as not to lend itself to abuse in maintaining the *status quo* by force.

The importance of the latter consideration was emphasized in a letter by General Tasker Bliss, chief military expert of the American delegation at the Peace Conference, in which he pointed

[1] See Chapter VIII., pp. 213-214, 220.

out to Wilson that the presence of a phrase in Wilson's preamble concerning the maintenance of "orderly government" and the absence from the guarantee article of some such qualifying clause as "against external aggression" might lend themselves to the interpretation that the Covenant, like the Holy Alliance, was designed to maintain the *status quo* against the forces of evolution and change.

THE THIRD WILSON DRAFT

With the aid of this letter and a lengthy criticism by Mr David Hunter Miller, the legal adviser of the Delegation, Wilson prepared a third draft, in which he made great efforts to take the fullest possible account of the material contained in the various British drafts and the criticisms which had been made. This third draft in general resembled the second, with the changes suggested by General Bliss, but added a clause binding the member states not to prohibit or interfere "with the free exercise of religion," and in no way to "discriminate either in law or in fact against those who practise any particular creed, religion or belief whose practices are not inconsistent with public order or public morals." It further bound the signatory Powers to exercise no discrimination in their fiscal and economic relations "between one nation and another among those with which they have commercial and financial dealings."

He added an article stating that,

"the rights of belligerents on the high seas outside territorial waters having been defined by international convention, it is hereby agreed and declared as a fundamental covenant that no Power or combination of Powers shall have a right to overstep in any particular the clear meaning of the definitions thus established; but that it shall be the right of the League of Nations from time to time and on special occasion to close the seas in whole or in part against a particular Power or particular Powers for the purpose of enforcing the international covenants here entered into."

THE BRITISH DRAFT

At about the same time as Wilson's third draft (*i.e.* January 20) an official British draft was brought out, which evidently had been composed after careful study of the second Wilson draft, just as the President's third draft had taken full account of Smuts' and Cecil's proposals. The centre of the scheme was still a period of guaranteed discussion and delay, interposed between the outbreak of a dispute and resort to war and backed by economic and military sanctions. The Contracting Parties pledged themselves to submit matters in dispute to a court of international law or "to the Con-

ference or the Council of the League," and not to go to war until after a certain period for the consideration of the matter and the rendering of a decision or report by the competent body, nor in any case with a state complying with such decision or report.

The High Contracting Parties undertake to

" respect the territorial integrity of all States Members of the League and to protect them from foreign aggression, and they agree to prevent any attempt by other states forcibly to alter the territorial settlement existing at the date of or established by the present treaties of peace. . . . If at any time it should appear that the boundaries of any state guaranteed by Article 1 (i) (ii) do not conform to the requirements of the situation, the League shall take the matter under consideration and may recommend to the parties affected any modification which it may think necessary. If such recommendation is rejected by the parties affected, the States Members of the League shall, so far as the territory in question is concerned, cease to be under obligation to protect the territory in question from forcible aggression by other states imposed upon them by the above provision."

The General Conference of the League, it was proposed, should be held " from time to time as occasion may require and in any case at intervals of not more than four years." As for the Council,

" the High Contracting Parties appoint the following States Members of the League to constitute the Council of the League : France, Great Britain, Italy, Japan and the United States of America. The Council may at any time co-opt additional members. Except as provided hereafter, no state shall be represented at any meeting of the Council by more than two members."

In the matter of technical co-operation the British draft was most detailed and specific. It is an interesting fact that the provisions relating to technical co-operation can be traced directly to Mr Leonard Woolf's *International Government*, already quoted. This book is a striking analysis of what already existed before the war in the way of technical co-operation and a powerful argument for rooting the League as deeply and solidly as possible in this particular field of international relations. The book was read by a prominent member of the Foreign Office, who was concerned with preparing the British official draft, and led him to write a lengthy minute strongly urging the inclusion of these provisions in the draft, which was accordingly done. In addition to stating that " the High Contracting Parties place under the control of the League all international bureaux established by general treaties and now located elsewhere, if the parties to such treaties consent," the draft provides that

" all such international bureaux to be constituted in future shall be placed under the supervision of the League, and shall be located at the seat of the

League. . . . They entrust to the League the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest.

"They will endeavour to secure and maintain freedom of transit and just treatment for the commerce of all States Members of the League.

"They appoint commissions to study and report to the League on economic, sanitary, and other similar problems of international concern, and they authorize the League to recommend such action as these reports may show to be necessary.

"They appoint a commission to study conditions of industry and labour in their international aspects, and to make recommendations thereon, including the extension and improvement of existing conventions.

"Stipulations for securing the above objects are embodied in separate Conventions annexed hereto or in the general treaties of peace.

. . . . . .

"The Conventions to be annexed to the Covenant will be, roughly, the following :

"(*a*) Conventions defining territorial settlements ;
"(*b*) Conventions defining the responsibilities of mandatory States ;
"(*c*) Conventions dealing with arms traffic, liquor traffic and other tutelage of backward races ;
"(*d*) Conventions defining general economic policy (*e.g.* transit, air, trade conditions) ;
"(*e*) Conventions dealing with international labour conditions ;
"(*f*) Conventions establishing the legal machinery of the League ;
"(*g*) Conventions dealing with standard international activities of a more scientific or technical character (*e.g.* Health) ;

and establishing in each case the international organs, whether Commissions of Inquiry or Administrative or semi-Administrative Commissions, required to carry out the terms of each Convention.

"These Conventions will probably include not only new Conventions signed at Paris, but a number of existing agreements which the League will take over (*e.g.* existing agreements under (*g*), such as the Postal Union)."

The Hurst-Miller Draft

It had been President Wilson's hope that his third draft would be sufficiently close to British views to make it the basis of the labours of the Peace Conference Commission, but it was found necessary to have a preliminary discussion between Sir Cecil Hurst, the legal adviser to the Foreign Office, and his American opposite number, Mr David Hunter Miller. The resulting so-called Hurst-Miller draft was practically the agreed Anglo-American draft, and was presented as such to the League of Nations Commission of the Peace Conference.

In substance, and even in form, it bears a strong general resemblance to the subsequent Covenant. It however allows the High Contracting Parties "not more than two representatives" to the Assembly (designated as the Body of Delegates), while it defines the Council as follows :

"The representatives of the States Members of the League directly affected by matters within the sphere of action of the League will meet as an Executive Council from time to time as occasion may require.

"The United States of America, Great Britain, France, Italy and Japan shall be deemed to be directly affected by all matters within the sphere of action of the League. Invitations will be sent to any Power whose interests are directly affected, and no decision taken at any meeting will be binding on a State which was not invited to be represented at the meeting." [1]

The draft further suggested an inquiry "into the feasibility of abolishing compulsory military service and the substitution therefor of forces enrolled upon a voluntary basis, and into the naval and military equipment which it is reasonable to maintain," and repeated the paragraph in the third Wilson draft concerning religious freedom. The guarantee of territorial integrity and political independence against external aggression was reduced practically to the form in which it subsequently appeared in the Covenant. Wilson's and Cecil's provisos and reservations disappeared—presumably because the jurists thought them too revolutionary an innovation on existing conceptions of sovereignty and international law.

THE LEAGUE OF NATIONS COMMISSION

The gradual working out of a basis for discussion by the Peace Conference was accompanied by a struggle between President Wilson and the other delegations as to the nature of the body which was to conduct these discussions. Wilson himself preferred the Council of 10, or Council of Prime Ministers, whereas most of the other delegations considered that the matter could be more suitably dealt with by something in the nature of an expert committee on which the small Powers should have somewhat wider representation.[2] Finally, a special League of Nations Commission was appointed, composed of the five Great Powers—America, France, Great Britain, Italy and Japan—with two delegates each,

[1] Temperley (*op. cit.*, vol. ii., p. 29) says that the doctrine of the equality of states was one of the main difficulties encountered in establishing the League. "The doctrine . . . was, of course, the palladium of the smaller nations. No Council could be constructed except at the cost of some hardly logical compromise with this doctrine. A parliamentary assembly based on proportional representation of populations was repugnant to it. It stood in the way of any elaboration by the Commission of the Project for a Permanent Court of International Justice. By appealing to it Japan was able to enlist the support of the smaller states for the analogous doctrine of racial tolerance." See also below, pp. 90, 127-130.

[2] Ray Stannard Baker (*ibid.*) suggests this was part of an "intrigue" to "sidetrack" the League and postpone serious consideration of it until the spoils of war had been divided, and military and economic terms imposed on Germany, etc. Wilson's idea was to get agreement upon the League first, in order to make it the basis of the whole peace settlement. See, however, the account given by Temperley, *History of the Peace Conference*, vol. i., pp. 261-262, showing the practical reasons for the procedure adopted.

and five smaller Powers, subsequently increased to nine—namely, Belgium, Brazil, China, Czechoslovakia, Greece, Poland, Portugal, Roumania and Yugoslavia. Wilson, however, attended the Committee in person, as the chief American delegate, and this greatly enhanced its importance. The British delegates were Lord Robert Cecil and General Smuts, the former acting as chairman in Wilson's absence. The second American delegate was Colonel House, assisted, and sometimes replaced, by Mr David Hunter Miller. France was represented by M. Leon Bourgeois, assisted by M. Larnaude. The delegates of the other Powers were as follows: Belgium, M. Hymans; Brazil, M. Pessoa; China, Mr Wellington Koo, occasionally replaced by Mr Tchu Wei; Czechoslovakia, M. Kramar; Greece, M. Venizelos; Poland, M. Dmowski; Portugal, M. Batalha Reis; Roumania, M. Diamandi; Yugoslavia, M. Vesnitch.

ITS TERMS OF REFERENCE

The terms of reference to the Commission adopted by the plenary Conference on January 24, 1919, were as follows:

"1. It is essential to the maintenance of the world settlement, which the Associated Nations are now met to establish, that a League of Nations be created to promote international co-operation, to ensure the fulfilment of accepted international obligations, and to provide safeguards against war.

"2. This League should be created as an integral part of the General Treaty of Peace, and should be open to every civilized nation which can be relied on to promote its objects.

"3. The members of the League should periodically meet in international conference, and should have a permanent organization and secretariat to carry on the business of the League in the intervals between the conferences.

"The Conference therefore appoints a Commission representative of the Associated Governments to work out the details of the constitution and functions of the League."

The terms of reference show how essentially political was the conception of the Peace Conference regarding the League. There was indeed a strong and conscious reaction against the "legalistic" conceptions that had inspired the peace work at The Hague, for it was felt that The Hague Arbitral Tribunal and the whole movement behind it had proved futile at the crisis of the world war, and it was desired to make it as clear as possible that this was a new start, not to be confused with the discredited older attempt.[1]

[1] *Cf.* Temperley, *op. cit.*, vol. ii., p. 23: "Owing to the experience of the war, the idea of legal arbitration had to a considerable degree receded into the background, especially in the minds of statesmen at Washington and London, where, even before the war, the failure of the 1911 Arbitration Treaties and their supersession by the "Bryan" Conventions had marked a tendency to seek peace in conciliation rather than in judicial procedure." *Cf.* also "The Making of the Covenant," by Philip Baker, in *Les Origines et l'Œuvre de la Société des Nations*, vol. ii., and see below, pp. 411-412.

This was one of the main reasons prompting the selection of Geneva as the seat of the League.

FIRST SESSION

The first meeting of the Commission was held on February 3, 1919, and elected President Wilson to the chair. He somewhat curtly presented the Commission with the Hurst-Miller draft and intimated that he expected the Commission to adopt it as the basis of its discussions. Signor Orlando presented a hastily concocted Italian scheme and M. Leon Bourgeois a carefully thought-out and elaborate French draft,[1] framed by an important French official committee, of which M. Bourgeois himself had been the chairman. The President expressed his gratitude for these contributions, but maintained his proposal. The non-Anglo-Saxon members of the Commission rather resented these " railroading " tactics, but were obliged to yield the point and reject the French and Italian drafts. It is therefore fair to say that the Covenant as it emerged is very largely an Anglo-American production. A further interesting consequence was that all the original texts on which the discussion was based were in English, and that the French text of the Covenant, although of equal authority, is in fact a translation of the original English text that was not even revised by the Drafting Sub-Committee of the Commission.[2]

The Commission held ten meetings between February 3 and 14. These meetings were divided into a first-reading and a second-reading debate. In the first-reading debate each article was examined carefully and agreement reached in principle; in the second debate the Commission confined itself to redrafting the articles on the basis of the agreement already reached. For the latter purpose a Drafting Committee was appointed.

In the first-reading debate the religious equality clause disappeared, since the Japanese proposed an amendment which would have made it include racial equality as well, and in spite of lengthy negotiations, and a formula that was agreed on by the Japanese and some of the Dominion representatives, it was found impossible to reach agreement. This question was ultimately raised by the Japanese on the day the Covenant was adopted by the Peace Conference, but with equally small success. The reference to abolishing conscription in the Hurst-Miller draft also disappeared and the disarmament clauses in general were watered

[1] Ray Stannard Baker, *ibid.*, vol. iii., gives an English translation of the French draft.

[2] See " The Making of the Covenant," by Philip Baker, *ibid.*

down under pressure of the Continental Allies. It was provided that small Powers should be admitted to the Council, although in a minority of one, under pressure of the nine small Powers on the Commission, who indignantly refused to accept the suggestion that Great Powers only should sit in the Council and small Powers merely be invited when their interests appeared involved. On this point the small Powers went to the length of intimating that they would not enter a league so composed.

PUBLICATION OF THE DRAFT COVENANT

On February 14 the Commission published the preliminary draft of the Covenant for the consideration of world opinion, and invited comment and criticism. It was soon after this that Wilson went to America, and the second session of the Commission was therefore not held until March 22.

THE CONFERENCE OF THE NEUTRALS

In the meantime there was an informal conference on March 10, summoned by Lord Robert Cecil and Colonel House, with Wilson's approval and after consultation with their colleagues on the Commission, of the representatives of the thirteen neutral states—namely, Argentina, Chile, Colombia, Denmark, Holland, Norway, Paraguay, Persia, Salvador, Spain, Sweden, Switzerland and Venezuela. Two sessions of this informal conference were held under the chairmanship of Lord Robert Cecil, and in the presence of M. Hymans, Colonel House and Professor Larnaude. The session was confined to eliciting the views of the neutral representatives and ensuring that they clearly understood the terms and implications of the draft Covenant. The Allied representatives at this meeting took the view that their function was to inform their colleagues on the Commission of the views of the neutral Powers, as well as inform the neutral Powers of the views of the Commission. There is some difference of opinion among good authorities as to the extent to which these meetings enabled the neutrals to exert an influence on the framing of the Covenant. Thus Professor Philip Baker, who was himself present at the proceedings, writes :

" It may seem that two such meetings as these constituted a very inadequate participation of the neutral states in the preparation of the Covenant, and yet it was the whole share which they were destined to have in the work of making the League. In fact, however, this share was less inadequate than it appears, for the suggestions made by the neutral representatives were taken very seriously by the Commission as a whole, and largely in deference to their views many important changes in the draft Covenant were introduced. Certain provisions of the original Covenant to which many of them had taken particular exception disappeared, and other parts of the Covenant were developed in

accordance with the desires they had expressed. . . . After the meetings of the neutral Powers . . . great impetus was given to the 'legalist' movement among the members of the Commission, and before the final draft of April 28th was drawn up a number of . . . provisions of great importance had been inserted. These provisions . . . had for their most important result to make it plain . . . that the real purpose of the Commission was to secure the establishment of a true court of international justice." [1]

Professor W. E. Rappard—the distinguished Swiss member of the Mandates Commission and for the first few years of the Secretariat Director of the Mandates Section—writes on the matter from the point of view of the neutrals concerned as follows :

" The neutral Powers, although they cannot, in any true sense, be considered as co-authors of the Covenant, were offered an opportunity of presenting their views about it before its final adoption. They were unanimous in favour of immediate universality, and with one accord insisted on the necessity of developing, in a spirit of absolute impartiality, the conciliatory and judicial functions of the League. The reticence on the subject of sanctions which they also displayed, sprang from their obvious misgivings about the possibility of enforcing League decisions on recalcitrant nations, in the present state of international solidarity . . . the influence of the neutrals . . . may have tended somewhat to strengthen the hands of the friends of arbitration among the Allied representatives and to improve the wording of the provisions of the Covenant dealing with the admission of new members." [2]

The American Amendments

Meanwhile the first mutterings of the storm that was to break in America against Wilson and his policy had begun to be heard. Wilson, on his visit to the States in the early spring of 1919, made a vigorous defence of the Covenant, the whole Covenant and nothing but the Covenant in the form published on February 14. Nevertheless he began to realize that, unless there was some modification of the existing terms, there was small chance of getting the document accepted by the Senate and public opinion. After some hesitation he decided that he would rather face a renewed fight in the League of Nations Commission to get certain American amendments accepted than risk the rejection of the Covenant in the States. He was guided in this decision by the representations of a number of friends, including such influential Republicans as ex-President Taft, President Lowell of Harvard University and Elihu Root.

[1] See "The Making of the Covenant," by Philip Baker, pp. 27 and 50, and below, p. 365.

[2] In " The League of Nations as an Historical Fact," printed as a lecture in *The Problems of Peace*, being the first volume of the Proceedings of the Geneva Institute of International Relations.

On March 4, United States Senator K. M. Hitchcock wrote to the President that :

" A number of republican Senators who signed Lodge's manifesto on the league of nations constitution will, in my opinion, vote for it nevertheless if it is a part of the peace treaty. A still larger number will give it support if certain amendments are made. The following I would mention as likely to influence votes in the order given :

" First, a reservation to each high contracting party of its exclusive control over domestic subjects.

" Second, a reservation of the Monroe Doctrine.

" Third, some provision by which a member of the League can, on proper notice, withdraw from membership.

" Fourth, the settlement of the ambiguity in Article XV.[1]

" Fifth, the insertion on the next to the last line of first paragraph of Article VIII., after the word ' adopted,' of the words ' by the several governments.' [2]

" Sixth, the definite assurance that it is optional with a nation to accept or reject the burdens of a mandatory."

Taft cabled on March 18, after Wilson's return to Paris :

" If you bring back the treaty with the League of Nations in it make more specific reservations of the Monroe Doctrine, fix a term for the duration of the League, and the limit of armament, require expressly unanimity of action of Executive Council and body of Delegates, and add to Article XV. a provision that where the Executive Council or the Body of Delegates finds the difference to grow out of an exclusively domestic policy, it shall recommend no settlement, the ground will be completely cut from under the opponents of the League in the Senate. Addition to Article XV. will answer objection as to Japanese immigration, as well as tariffs under Article XXI.[3] Reservation of the Monroe Doctrine might be as follows :

" Any American State or States may protect the integrity of American territory and the independence of the Government whose territory it is, whether a member of the League or not, and may, in the interests of the American peace, object to and prevent the further transfer of American territory or sovereignty to any Power outside the Western Hemisphere.

" Monroe Doctrine reservation alone would probably carry the treaty, but others would make it certain."

A similar cable was sent on April 13 by Taft and President Lowell in the following terms :

" Friends of the covenant are seriously alarmed over report that no amendment will be made more specifically safeguarding Monroe Doctrine. At full meeting of Executive Committee of League to Enforce Peace, with thirty

[1] Article XV. deals with the settlement of disputes through the Council or Assembly. See Taft's cable of March 18, quoted above, for an explanation of the " ambiguity."

[2] Article VIII. declares that the Council is to formulate plans for disarmament and submit them to the Government. " After these plans shall have been adopted *by the several Governments*, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council."

[3] Article XXIII. in the Covenant. The reference is presumably to the phrase relating to the equitable treatment of the commerce of States Members.

members from eighteen States present, unanimous opinion that without such amendment Republican Senators will certainly defeat ratification of treaty, because public opinion will sustain them. With such amendment, treaty will be promptly ratified."

These documents are worth quoting in full, not only for the light they cast on the origin of certain parts of the Covenant, but because they give a partial answer to the criticism that Wilson made no attempt to placate his opponents in the Senate by agreeing to modifications in the Covenant, and are a partial justification for the retort that those who objected to the Covenant were putting forward their objections for reasons of party politics and the moment one set of objections were answered would have invented a further lot. Moreover, they show how modest, so to speak, were the first beginnings of American disinclination to co-operate—how absurd, indeed, does it seem in the light of subsequent events that there was any trouble about accepting the original modifications proposed or the subsequent reservations, for all of them together still implied a degree of American co-operation and commitment to the rest of the world that has long since been dismissed as an impracticable dream by the members of the League. The tide of reactionary nationalism that set in soon after the Armistice, in America as elsewhere, rose steadily but slowly. Had Wilson been more prompt and drastic in his concessions he might have overtaken the tide. But his first inclination was to fight for the February draft as though it were verbally inspired, and when he could bring himself to contemplate changes he was forced into a bitter fight by the French, whose anxiety about "security" was equalled only by their ignorance of America.

Second Session of the Commission

In accordance with the advice given him by Senators and pro-League Republicans, President Wilson proposed amendments to the Covenant at the second session of the League of Nations Commission. The question of making mandates optional was disposed of without the need of any formal amendment, for it was obvious that no nation could be asked to undertake or would undertake a mandate except with its own consent. The question of declaring that disputes on matters within the domestic jurisdiction of one of the parties were outside the competence of the League was dealt with by an appropriate sentence in Article XV. of what was to be the Covenant.[1]

The question of explicitly indicating the right of withdrawal

[1] See below, p. 347, footnote, for the effect of the "domestic jurisdiction" reservation on the evolution of international law.

aroused considerable opposition. The Continental members of the Commission objected strongly, arguing that, by entering the League and undertaking new obligations for the maintenance of peace and the reduction of armaments, they would be making national sacrifices to which they could agree only in return for the support which the other members of the League undertook to give them. If this support could be withdrawn at short notice by important members of the League simply resigning, and thereby greatly weakening the whole institution, the remaining states might be placing themselves in a position of real danger. This argument was overcome by a general appeal to the rights of sovereignty, the necessity for great and proud nations having the consciousness of ultimate freedom implied by the knowledge that they could leave the League if and when they so desired, and by the *argumentum ad hominem* that this provision must be inserted if the Covenant were to be accepted by the American people.

It seems fair in the light of subsequent events to comment that this provision, introduced at the instance of the United States, while it failed to make the Covenant acceptable to America, has subsequently proved a source of weakness to the League. The calculation at the time was, of course, that this clause would remain a dead letter, but this has not proved the case ; and it is at least arguable—and was indeed argued by the Federation of League of Nations Societies at their congress in Berlin of 1927—that the Covenant as it now stands makes withdrawal too easy and readmission without humiliation and public recantation too difficult.

The Monroe Doctrine and the Covenant

The amendment which at the time, however, aroused the greatest difficulty was the proposal to insert some clause safeguarding the Monroe Doctrine. Wilson's attitude on this matter was essentially that of Taft, as expressed by the latter in a cablegram to the President, of March 16[1] :

> " These suggestions [for amendments to the Covenant] do not look to a change in the structure of the League, the plan of its action or its real character, but simply to removing objections in the minds of conscientious Americans who are anxious for a League of Nations, whose fears have been aroused by suggested constructions of the League which its language does not justify, and whose fears could be removed without any considerable change of language."

In the mind of the President the Covenant was merely a world-wide application of the Monroe Doctrine, and a text referring to

[1] Ray Stannard Baker does not explain whether this is the date of dispatch of the telegram mentioned above, p. 92, and below, p. 95.

it was, from the international point of view, harmless though superfluous, while essential as a matter of tactics to conciliate ignorant or misguided opposition at home. Lord Robert Cecil understood and supported this argument, saying that

> " the amendment had been inserted in order to quiet doubts and to calm misunderstandings. It did not make the substance of the doctrine more or less valid. . . . There was nothing in the Monroe Doctrine which conflicted with the Covenant and therefore nothing in the Covenant which interfered with international understandings like the Monroe Doctrine." [1]

On the other hand, the British delegation was not enthusiastic about the text of the proposed American amendment, which was simply a paraphrase of that suggested in the Taft message of March 18. Instead an alternative text was proposed by Lord (then Mr) Balfour and Lord Robert Cecil, which, with slight changes, was subsequently incorporated in the Covenant—namely :

> " Nothing in this Covenant shall be deemed to affect any international engagement or understanding for securing the peace of the world such as treaties of arbitration and the Monroe Doctrine."

Ray Stannard Baker, from whom this quotation is taken, suggests that the motive for the wider and vaguer text of the British proposal was to cover such arrangements as the Anglo-Japanese Alliance ; but this explanation seems a little far-fetched. It seems quite enough to assume that what was in the minds of the British delegation was, first of all, a disinclination to make a clause in a world treaty with reference solely to the needs of one Power, particularly without guarantee that the Power concerned would subsequently accept the clause (which it, in fact, of course failed to do). There may also have been some hesitation to be committed to detailed provisions concerning a doctrine that had hitherto not been internationally recognized, and that was most unpopular with a good many of the countries directly affected. In theory this clause might be abolished on the ground that the only motive for its insertion was to please America, and once this motive had failed to operate it might as well be removed to please the states who really have become members of the League. This idea, however, is not practicable, because the paragraph in question has become part of the structure of the League and the basis for a number of developments in the shape of interpretations, local agreements,

[1] Minutes of the League of Nations Commission of the Peace Conference.

etc., scarcely foreseen by its framers. The fact that it would become the legal basis for regionalism, separate treaties and alliances of all kinds, with all that this implies of good and bad,[1] was, however, foreseen by the Chinese delegation and was the cause of Mr Wellington Koo getting the word "understandings" added to the text of Article XX.,[2] so as to make it cover possible undesirable interpretations of this clause (subsequently Article XXI.).

The opposition of the French to the very idea of the amendment was fierce, and based largely on the original proposal to add it as an additional paragraph to Article X., which they considered it would weaken. They first demanded a clear definition of the Monroe Doctrine, in deplorable ignorance of the fact, immortalized by Mr Dooley in one of his famous soliloquies, that, while any good American would die for the Monroe Doctrine, he does not know what it is. Afterwards they wanted it made perfectly clear that the clause referring to the doctrine would not in any way interfere with America's obligation to intervene in Europe under Article X., which in those days, under the influence of Wilson's view of its meaning, was given an importance that it is no longer considered to possess. Thus:

"M. Larnaude thought that it would certainly be very unfortunate if the Monroe Doctrine should be interpreted to mean that the United States could not participate in any settlement of European affairs decided by the League....

"President Wilson again assured M. Larnaude that if the United States signed this document they would be solemnly obliged to render aid in European affairs when the territorial integrity of any European State was threatened by external aggression."[3]

The Brazilian representative then asked

"whether the Monroe Doctrine would prevent League action in American affairs.

"President Wilson replied in the negative. The Covenant provided that members of the League should mutually defend one another in respect of their political and territorial integrity. The Covenant was therefore the highest possible tribute to the Monroe Doctrine. It adopted the principle of the Monroe Doctrine as a world doctrine. . . . His colleagues in America had asked him

[1] See the chapter in Volume II. on "The Constitutional Evolution of the League" for a discussion of regionalism within the League, and below, pp. 157-159.

[2] Article XX. reads:

"Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace."

[3] See the chapter on "Security and Disarmament" in Volume II. for a discussion of Article X., and also Bruce Williams, *State Security and the League of Nations*, as well as above, pp. 71-73, and below, p. 113.

whether the Covenant would destroy the Monroe Doctrine. He had replied that the Covenant was nothing but a confirmation and extension of the doctrine." [1]

These debates have a tragi-comic ring—Wilson inserting his amendment to meet the desire of his countrymen for isolation and freedom from commitments, while trying to persuade his Continental and Latin American colleagues on the Commission that they, in fact, left America and Europe as much bound to each other as before.

Unfortunately, Wilson's interpretation of the Monroe Doctrine and its relation to the Covenant was not that of his countrymen,[2] while French official opinion had little understanding of American conditions and American psychology, and combined the desire to see America and other countries committed up to the hilt on paper to rendering immediate and unlimited assistance to France, with the conviction that without this paper commitment no help would be forthcoming. Finally the French were pacified by making the amendment—in the wider and vaguer form proposed by the British delegates—an independent article (XXI.), widely separated from the part of the Covenant to which Article X. belongs, and by the United States and Great Britain consenting to give a five years' guarantee against aggression to France.[3]

In the upshot, of course, this and other amendments failed in their main object of allaying American apprehensions, but they have each in its separate way contributed to the evolution of the

[1] Minutes of the League of Nations Commission.

[2] Wilson's interpretation has been given earlier in this chapter (p. 71). In 1923, on the centenary of Monroe's Declaration, Secretary of State Hughes publicly reaffirmed the traditional interpretation. For the nature of this interpretation and its relation to the problem of America and world co-operation see the chapters on America in Volume III.

[3] "Sanctions," says Temperley, "was one of the three underlying difficulties disclosed by the negotiations, and necessarily inherited by the League itself from its birth." This question was of great interest to the smaller states. "France throughout took the lead in attempting to strengthen the provisions of the Covenant dealing with the enforcement of peace. This was indeed the central point of difference in the proceedings of the Commission. The French representatives made repeated attempts not only to increase the scope of the obligations assumed by members of the League under Article XVI., but to provide for international machinery to supervise national armaments, with power to pass upon their adequacy from the point of view of an international police force as well as upon their compliance with any limitations that might be imposed upon them as the result of the procedure foreshadowed in Article VIII. The moderation of the Covenant in this respect was maintained only at the cost of considerable resentment in French circles, a resentment eventually allayed only by the scheme for Franco-British and Franco-American treaties of guarantee" (*op. cit.*, vol. ii. pp. 29-30). On the general question of sanctions see below, pp. 336-339, 359-363, and Volume II.

League, and probably none of them in ways foreseen by their authors.[1]

The second session of the Commission was divided into first and second readings, like the first session. The first reading took place in three meetings between March 22 and 26. The second reading covered two very long sessions—lasting till just midnight—on April 10 and 12. Between the first and second readings the text was gone through by a strong drafting committee, known as the Committee of Revision, consisting of Lord Cecil, Colonel House (assisted and sometimes replaced by David Hunter Miller), M. Larnaude and M. Venizelos. It was this committee which changed the phrase "High Contracting Parties" to "Members of the League," "Executive Council" to "Council," "Body of Delegates" into "Assembly," and generally polished up the rough edges of the text. The text on which the Commission worked throughout was, as has already been pointed out, English, although *ad hoc* translations were made from time to time of texts under discussion. The Commission now directed that a French translation be made and brought into conformity with the English text, which was to remain unaltered. The British, French, American and Italian delegates agreed to a provisional French text, which, however, was never submitted to the Drafting Committee, although the latter was to have seen that it conformed to the English text. There are, consequently, considerable differences in the two texts. Both are of equal legal force, since the English and French texts of the Peace Treaties are both official, but it remains a fact that it was the English text to which the League of Nations Commission of the Peace Conference agreed.

A plenary meeting of the Peace Conference was held on April 28, 1919, and accepted the Covenant in the final form given it by the Commission. The Covenant, and with it the League, came into existence on January 10, 1920, the date on which the

[1] Temperley refers to the attitude of the United States as one of the three difficulties mentioned above, and remarks: "It would be easy to exaggerate the limiting effect of the Constitution of the United States on the terms of the Covenant. Broadly speaking, it probably did little more than supply a standard of national feeling by which the authors of the Covenant were guided in estimating the possibilities of international action. Its rigidity as a written constitution gave force to warnings which might have passed unheeded if they had been illustrated only by less tangible examples of nationalist feeling, such as British parliamentary sentiment or Polish public opinion. Except, possibly, in the case of the proposals for an international parliament, which were perhaps finally killed by the technical difficulties of reconciling them with its provisions, the influence of the American Constitution upon the drafting of the Covenant was probably beneficial and, in general, coincided closely with British feelings and policy" (*op. cit.*, vol. ii., p. 30). *Cf.* also below, pp. 214-217, and Volumes II. and III.

Versailles Treaty came into force by the deposit of Germany's ratification.

THE COVENANT

The Covenant or Constitution of the League that emerged as the distilled essence of this vast cloud of discussion, debate, drafts and counter-drafts, based on such a mass of political, economic and social antecedents going far back into history, the resultant of so many hopes, endeavours, achievements, failures, efforts and conflicts, seems at first sight a disappointingly short and vague document, consisting as it does of only a few lines of preamble, twenty-six articles and a brief annex.

" The answer to this contention lies in the purpose of President Wilson and his chief collaborators. It is, of course, true that they might have proceeded differently; they might have endeavoured to prepare a detailed and rigid constitution for the League which they set up, in which every possible contingency should be foreseen, and detailed rules laid down for the procedure to be followed. . . . If it had been their purpose to make such a detailed constitution then indeed the methods they adopted would have been inadequate, and their work hasty and incomplete. But their purpose was quite other than that. They did not wish to make a detailed and rigid constitution ; they wished to create on a sound and workable basis political institutions by means of which the statesmen of the future would be able to build up the fabric of international society. It was for this reason that they did not create a large number of sub-commissions and call on the advice of numerous legal and other experts. They felt that they were primarily concerned with the creation of a political instrument. . . .

" The Covenant which was made at Paris was founded on the basis of the national sovereignty of its members. Its purpose was the creation of a system of political institutions in which those members could co-operate freely in the conduct of their common affairs. In the constitution which the Covenant lays down for these institutions the principle of freedom and elasticity, urged from first to last by the Anglo-Saxon delegates, prevailed against the stricter legal and constitutional conceptions of some Continental members of the Commission. The result is that the Covenant, having created the institutions, leaves to the statesmen who have to use them the fullest liberty to work out, untrammelled by detailed constitutional rules, the development of the machinery they use.

" It would not be true to say that there are no rules laid down for the guidance of the statesmen of the League. There are some, but they were reduced to the very minimum which the Paris Commission thought essential to enable the institutions of the League to function. Within these rules, the purpose of the Covenant is to eliminate from international affairs the factor of physical force and the consequences to which a reliance on physical force inevitably leads. It leaves free, within the political institutions which it created, a field for the operation in the affairs of nations of those political forces—public opinion, the consciousness of the supreme interest of the community as a whole, the desire for organized justice—which dominate in the domestic affairs of civilized peoples." [1]

[1] Philip Baker, " The Making of the Covenant."

MEMBERSHIP

The conditions of membership are laid down in Article I. of the Covenant, which says that :

" 1. The original Members of the League of Nations shall be those of the signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

" 2. Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

" 3. Any Member of the League may, after two years' notice of its intention to do so, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal."

Annex I. of the Covenant mentions the following states as original members of the League, by virtue of being signatories of the Treaty of Peace :

America, United States of	( )
Belgium	(January 10, 1920)
Bolivia	(January 10, 1920)
Brazil	(January 10, 1920)
British Empire	(January 10, 1920)
Canada	(January 10, 1920)
Australia	(January 10, 1920)
South Africa	(January 10, 1920)
New Zealand	(January 10, 1920)
India	(January 10, 1920)
China	(July 16, 1920)
Cuba	(March 8, 1920)
Ecuador	( )
France	(January 10, 1920)
Greece	(March 30, 1920)
Guatemala	(January 10, 1920)
Haiti	(June 30, 1920)
Hedjaz	( )
Honduras	(November 3, 1920)
Italy	(January 10, 1920)
Japan	(January 10, 1920)
Liberia	(June 30, 1920)
Nicaragua	(November 3, 1920)
Panama	(January 9, 1920)
Peru	(January 10, 1920)
Poland	(January 10, 1920)

Portugal	(April 8, 1920)
Roumania	(September 14, 1920)
Serb-Croat-Slovene State	(February 10, 1920)
Siam	(January 10, 1920)
Czechoslovakia	(January 10, 1920)
Uruguay	(January 10, 1920)

The United States, Ecuador and Hedjaz failed to ratify the Peace Treaty and so did not become members of the League.

The same annex further mentions the following states [1] as being "invited to accede to the Covenant":

Argentine Republic	(July 18, 1919)
Chile	(November 4, 1919)
Colombia	(February 16, 1920)
Denmark	(March 8, 1920)
Netherlands	(March 9, 1920)
Norway	(March 5, 1920)
Paraguay	(December 26, 1919)
Persia	(November 21, 1919)
Salvador	(March 10, 1920)
Spain	(January 10, 1920)
Sweden	(March 9, 1920)
Switzerland	(March 8, 1920)
Venezuela	(March 3, 1920)

All these states were invited and became members of the League. In addition, the First Assembly admitted:

Albania	(December 16, 1920)
Austria	(December 16, 1920)
Bulgaria	(December 16, 1920)
Costa Rica	(December 16, 1920)
Finland	(December 16, 1920)
Luxemburg	(December 16, 1920)

The Second Assembly admitted Estonia, Latvia and Lithuania (September 22, 1921). The Third Assembly admitted Hungary (September 18, 1922), the Fourth the Irish Free State (September 10, 1923) and Abyssinia (September 28, 1923), and the Fifth the Dominican Republic (September 29, 1924). The Seventh Assembly admitted Germany on September 8, 1926.

Switzerland, partly because she is the seat of the League and chiefly owing to her long tradition of neutrality in the heart of Europe, guaranteed by international agreements, was granted at the insistent request of the Swiss Government a special position,

[1] These, it will be noted, are the thirteen neutrals that were invited to give their views on the draft Covenant.

which is defined by the resolution of the League Council of March 1920 as follows :

" The Council of the League of Nations, while affirming that the conception of neutrality of the members of the League is incompatible with the principle that all members will be obliged to co-operate in enforcing respect for their engagements, recognizes that Switzerland is in a unique situation, based on a tradition of several centuries which has been explicitly incorporated in the Law of Nations ; and that the members of the League of Nations, signatories of the Treaty of Versailles, have rightly recognized by Article 435 that the guarantees stipulated in favour of Switzerland by the Treaties of 1815, and especially by the Act of November 20, 1815, constitute international obligations for the maintenance of peace. The members of the League of Nations are entitled to expect that the Swiss people will not stand aside when the high principles of the League have to be defended. It is in this sense that the Council of the League has taken note of the declaration made by the Swiss Government in its message to the Federal Assembly of August 4, 1919, and in its Memorandum of January 13, 1920, which declarations have been confirmed by the Swiss delegates at the meeting of the Council and in accordance with which Switzerland recognizes and proclaims the duties of solidarity which membership of the League of Nations imposes upon her, including therein the duty of co-operating in such economic and financial measures as may be demanded by the League of Nations against a Covenant-breaking State, and is prepared to make every sacrifice to defend her own territory under every circumstance, even during operations undertaken by the League of Nations, but will not be obliged to take part in any military action or to allow the passage of foreign troops or the preparations of military operations within her territory.

" In accepting these declarations, the Council recognizes that the perpetual neutrality of Switzerland and the guarantee of the inviolability of her territory as incorporated in the Law of Nations, particularly in the treaties and in the Act of 1815, are justified by the interests of general peace, and as such are compatible with the Covenant."

The difficulty with which this concession was extorted and the importance attached to it by the Swiss show how large the question of sanctions bulked in the early days of the League. At the present date the controversy appears largely academic, for it is generally admitted that military sanctions are optional and the degree to which economic sanctions are applied by each state depends upon the judgment of its government, while on the other hand any application of sanctions may be regarded by the state against which such measures are taken as hostile acts, justifying a declaration of war. At the time Swiss opinion was fond of referring to the Swiss position by the statement that Switzerland had given up her economic but not her military neutrality. But it seems difficult to conceive of neutrality being divided into economic and military halves. The whole conception of neutrality would, indeed, appear

to belong to the category of pre-war ideas, that are scarcely compatible with the existence of the League.[1]

The clause in Article I. concerning armaments and effective guarantees of observing international obligations was interpreted by the Allies in the case of Germany so as to debar her from membership during the first few years of the League. Even in the case of Germany, however, she could almost certainly have become a member of the League three or four years before she actually did so had she been satisfied with anything less than immediate permanent membership of the Council. Austria and Hungary were admitted while the question of reparations was still unsettled, and both countries subsequently used the League to be, in effect, released from the whole or the greater part of their reparations obligations. In the case of Hungary, it is generally believed that the control of armaments by the Allies was never strict. In the case of Austria the Austrians themselves carried out their obligations on this point promptly and fully, while in the case of Bulgaria her admission to the League was voted only after a fairly searching cross-examination under Little Entente instigation on the state of her armaments. Finland and the Baltic States were made to promise not to build submarines beyond a certain limited size, at the instance of Great Britain.

Albania, Estonia, Finland, Latvia and Lithuania were admitted only after promising to satisfy the Council that their national minorities were enjoying a measure of protection equivalent to that contained in the minorities treaties imposed on certain states at the Peace Conference. On examining Finnish legislation concerning minorities the Council declared itself satisfied, but requested—and obtained, after protracted negotiations—more or less detailed declarations on this point from the remaining states.[2]

Abyssinia undertook to conform to the principles of the Convention and Protocol of St-Germain in regard to the traffic in arms and munitions, as well as adhere to the provisions of the Convention of St-Germain of September 10, 1919, concerning the abolition of slavery.[3]

Argentina became a member of the League by Presidential decree,

[1] For a discussion of sanctions and neutrality see the chapters in Volume II. on the " Peaceful Settlement of Disputes " and " Security and Disarmament." See also below, pp. 326-327, 336-339, 358-363.

[2] See the chapter on " Minorities " in Volume II.

[3] *Cf.* " Membership in the League of Nations," by Professor Manley O. Hudson, in vol. xvii., No. 3, July 1924, of *The American Journal of International Law* (also issued as a reprint). Professor Hudson gives a detailed account of the way in which the question of membership, and particularly the admission of new members, has been dealt with by the League from the beginning to the date of his article.

which was acted upon by the executive branch of the Government, although the decree was never ratified by the Argentine legislature. Thus Argentina became a member from the point of view of international law, though not from that of her constitution.

The Argentine delegation attending the First Assembly proposed an amendment to Article I. by which any sovereign state might become a member of the League by simply declaring its wish to do so. This amendment in the form proposed was in contradiction with other articles of the Covenant, providing for expulsion from the League as a sanction against an offending state, and furthermore ignored the fact that whereas some members of the League were not sovereign (*e.g.* the Dominions), others, although sovereign (San Marino and the Republic of Andorra, Lichtenstein, Monaco), were not eligible for membership owing to their small size. It was also proposed that the Assembly should elect all the members of the Council—a proposal put forward in the name of democracy, but highly undemocratic unless differences of voting power were introduced into the constitution of the Assembly.

The Assembly referred these proposals for study by a committee that was to consider a number of other amendments that had been put forward, but this was not considered satisfactory by the Argentine delegation, which thereupon withdrew from the Assembly. It was understood at the time that the motive for this move was partly a desire for personal success, which is an element to be reckoned with in Latin American delegates, and partly a wish to emphasize the need for universality, particularly with reference to Germany. At any rate the Argentine Government never gave notice of withdrawal, and shortly afterwards, upon there being a change of President, paid her arrears of contributions to the League and attended one or two League committees—notably the Preparatory Committee on the Disarmament Conference.

In other words, the Argentine from 1920 has been in a state of suspended membership, but is gradually feeling her way back to a full resumption of membership. The matter is complicated by the obscure and unsettled state of Argentine internal politics, notably the difficulty of getting the legislature to ratify decisions of the executive, which for some time has been carrying on as regards paying League contributions and attendance at League meetings on its own responsibility, in the expectation of subsequent ratification so soon as it is possible to collect a quorum of the legislature.

Bolivia and Peru have been absent from the Assembly since its

third meeting, when they refused to attend at the last moment on hearing that the Chilean delegate was to be elected President. Peru at that time was engaged in a dispute with Chile over the Tacna-Arica question and Bolivia sympathized with Peru. These countries have, however, regularly paid their League contributions and been represented at the League Committees and Conferences to which they have been invited.

Costa Rica gave notice of withdrawal from the League on January 1, 1925, and accordingly ceased being a member on January 1, 1927. This step was taken, it is said, owing to the insistence of the Assembly at several meetings that states in arrears with their League contributions should pay up, for Costa Rica simultaneously paid her back dues and announced her intention to withdraw. The question of whether the Central American States are or are not members of the League is not, of course, of great importance, since most of them do not pay their contributions or attend League meetings, but is bound up with the whole question of the position of Latin America in the League that is discussed in the chapters on America in Volume III.

Brazil and Spain gave notice of withdrawal on June 12 and September 8, 1926, respectively, as the final act in the struggle about permanent seats on the Council that attended Germany's entry into the League.[1] Spain announced in March 1928 that she would remain in the League and attend the next Assembly, in reply to a communication from the Council. It might be politically desirable—and should not prove legally impossible—to establish the doctrine that states which have left the League of their own volition could re-enter it on expressing their intention to do so, and would not need to apply for membership and submit to a vote of admission. In any case, Brazil is mentioned in the annex to the Covenant as an original member of the League and so is surely entitled to reconsider herself a member whenever she so desires.

The League was therefore at its maximum membership after the Seventh Assembly, when the admission of Germany brought the number of member states up to fifty-seven. The states eligible for membership outside the League are at present:

Afghanistan	Hedjaz	Tibet?
Brazil	Iceland	Turkey
Costa Rica	Iraq	Union of Socialist Soviet Republics
Ecuador	Mexico	United States of America
Egypt	Nepal	

[1] See below, pp. 142-147.

Of these countries the United States has taken an important part in most of the technical and some of the semi-political activities of the League, and the Soviet Union and Turkey take part in some important branches of the League's work. The nature and development of the relationship of these states with the League are discussed in the chapters on "America," "The Soviet Union" and "The Near East" in Volume III.

Mexico was not invited with the other thirteen neutrals to give its views on the draft Covenant in March 1919, and not mentioned in the annex to the Covenant as one of the states "invited to accede to the Covenant," because its Government was not recognized by, and having considerable difficulty with, the United States at the time. The trouble afterwards spread to include Great Britain, and the demand of the Mexican Government that what they consider the slight put upon them in 1919 by not inviting them should be made up by a formal invitation from the League to-day has hitherto kept Mexico out of the League. The difficulty is that there is no provision in the Covenant for any such procedure as inviting a state to become a member, but only for voting on the application of a state for admission. It is true the discussions in various Assemblies, particularly that of 1924, made clear the desire of the overwhelming majority of States Members to see Germany a member at the earliest possible moment, but it is doubtful whether any such general discussion would give the Mexican Government satisfaction. In any case, the desire of the other Latin American States, as well as a good many European members of the League, to see Mexico a member has been made abundantly clear to the Government of that country.

At the Conference of Lausanne, when the revised Peace Treaty with Turkey was drawn up, the Turkish representative, Ismet Pasha, declared on December 14, 1922, that Turkey would be happy to enter the League on the conclusion of peace. Various provisions of the Treaty of Lausanne are placed under the guarantee of the League.[1] For a long time the Turks refrained from taking any action, on the ground that the Lausanne Treaty had not yet been ratified, and after it was ratified the Mosul difficulty served as an excuse for further delay. The first result of the Mosul decision was to arouse a spirit of violent hostility to the League in Turkey, and although the Turks would appear by this time to have become reconciled to the *status quo* their feelings of distrust towards the League as an instrument of the "imperialist West"

[1] For a discussion of these provisions see Volume II.

against the nationalist East has been strengthened and preserved by the influence of the Soviet Union. The Turks have, however, been represented at various conferences, and are on the Disarmament Commission, and in general seem to be taking a growing interest in the technical and humanitarian activities of the League.

The Arab state of Hedjaz was mentioned in the annex to the Covenant as one of the original members of the League of Nations in its capacity of signatory of the Peace Treaty, but, like the United States, failed to ratify that instrument, and so is not a member.[1]

Iraq, which was originally an "A" mandate, signed a Treaty of Alliance and Co-operation with Great Britain which made it politically independent, subject to advice and assistance from the British Government, with the proviso that twenty-five years after the coming into force of the Treaty (as amended after the Mosul settlement), or sooner if this proved feasible, British guardianship should cease and the British Government would support the Iraq application for League membership.

As regards Egypt, the position is that the country is nominally a sovereign state, but that certain reserved subjects relating to the status of the Sudan, the administration of justice, protection of foreigners and British interests have not yet been settled with the British Government; and the latter takes the view that until they are settled it would be opposed to an Egyptian application for admission to the League. The tendency of such Egyptians as have any interest in the League at all—and their number is remarkably few—is to consider that Egypt should become a member of the League first and then negotiate an agreement through the League on the so-called reserved subjects.[2]

OBJECTS

The purposes of the League are described in the Preamble of the Covenant as

> "to promote international co-operation, and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another."

[1] See Volume III. for a discussion of the present international status of the Arab kingdoms.

[2] See Volume III. for a discussion of this subject.

(a) *Arbitration, Security, Disarmament*

In order to carry out these purposes the Covenant lays down a system for reduction of armaments (Article VIII.) ; mutual assistance against aggression (Articles X. and XVI.) ; peaceful settlement of disputes (inquiry and mediation or conciliation, arbitration and judicial settlement—Articles XI., XII., XIII., XIV., XV. and XVII.), and coercion of a state resorting to war without submitting to this procedure and the stipulated delay, or against a state accepting a League award (Articles X., XVI. and XVII.).

(b) *International Co-operation*

The Covenant also draws tighter the bonds of material and cultural interdependence between the States Members (co-operation in questions concerning labour, finance and economics, transport, health, traffic in drugs and women and children, intellectual co-operation, etc.—Articles XXIII.-XXV.).

(c) *International Compromises*

Thirdly, the Covenant and peace treaties provide for permanent or temporary compromises between nationalism and economic or geographic facts (Saar, Danzig, Mandates, Minorities : Article XXII. of the Covenant, and certain articles and annexes of the peace treaties).

MACHINERY

This threefold system is worked by machinery also provided for in the Covenant, and consisting of the Assembly (Article III.), the Council (Article IV.), the Secretariat (Articles VI. and VII.), the Court (Article XIV.), the Technical Organizations and Advisory Commissions (mostly based on Article XXIII., but the Mandates Commission was set up in virtue of Article XXII. and the Permanent Advisory Commission on Military, Naval and Air Questions is provided for by Article IX. of the Covenant). The Council and Assembly are the result of developing the general political conferences and rudimentary " concert of the Great Powers " that grew up in the last half-century. The technical organizations and advisory commissions have simply brought up to date and expanded the institution of so-called " public international unions " and conferences of experts that began to exist since about the same period. The Secretariat-General was founded mainly as the result of the experience in international administration gained during the war, but is perhaps newer than any other feature of the League, since there has never before been a completely international civil service.[1] The Permanent Court of International Justice represents a further stage in the work begun by The Hague Peace Conferences.

[1] See above, p. 69, and below, pp. 171-172.

Relations to other Treaties and Revision

Finally, there are several articles in the Covenant defining the relation of that instrument to other international treaties and laying down rules for its revision. These articles are Article XVIII. (providing that "every treaty or international engagement" to which a member of the League is a party shall be registered with and published by the Secretariat, and is not binding until so registered); Article XIX. (giving the Assembly the right to advise the reconsideration by members of the League of treaties which have become inapplicable); Article XX. (stating that the Covenant abrogates all obligations or understandings inconsistent with its terms and pledging members of the League not to enter into any engagements inconsistent with the Covenant); Article XXI. ("Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings such as the Monroe Doctrine, for securing the maintenance of peace"); Article XXVI. (saying that amendments to the Covenant will take effect when voted by the Assembly by a three-fourths majority, including the votes of all the members of the Council represented at the meeting, and ratified by the members of the Council at the time the vote was taken and by a majority of the Assembly. Any state not wishing to be bound by an amendment may signify its dissent and thereby cease to be a member of the League).[1]

THE LEAGUE AND THE PEACE TREATIES

The different parts of the system set up by the Covenant are described in detail and various criticisms and suggestions discussed in the chapters dealing with these sections of the League's organization and work. The development of the system as a whole during the League's existence to date is traced in the final chapter of Volume II., on "The Constitutional Evolution of the League." It will, therefore, be sufficient in this chapter to study certain general objections often levelled at the Covenant so as to try to establish what proportions of truth and error they may contain.

[1] The summary of Article XXVI. which is given is taken from the revised text voted by the 1921 Assembly, but not yet in force. The original text simply stipulates that amendments to the Covenant will take effect when ratified by the members of the League whose representatives compose the Council and a majority of the Assembly. It was therefore argued that the unanimity rule applied in voting amendments, and the above amendment to Article XXVI. was voted unanimously.

The Necessity of the Connexion

It has been shown in Chapter III. that the inclusion of the League in the peace treaties alone made possible the coming into existence of the League, and it may be added that this inclusion has been one of the chief factors in preserving the League in the years of reaction that immediately succeeded the war. It is true that because the Covenant was framed at the Peace Conference it was drawn up by the Allies—scant attention was paid to the views of neutrals and none at all to those of the Central Powers—and associated with parts of the dictated peace settlement obnoxious to the defeated countries. But making the peace settlement first and framing the Covenant later would not have obviated these difficulties. This method was actually strongly urged by reactionaries and nationalists in the Allied countries who wanted freedom to dictate peace on lines that would have launched European policy on a course making any League impossible in our generation and a new world war well-nigh inevitable. In believing that a League of Nations could live only if based on a reasonable peace settlement and knit indissolubly with the constitutional basis for most international relations that emerged from the war, President Wilson was profoundly right. Unfortunately his desire to make the League the key to the peace settlement was only partly fulfilled. In the upshot there was a compromise, which after infinite trial and tribulation has at least proved viable and gives promise of ultimately becoming successful.

The Nature of the Connexion

In addition to the functions already mentioned—Saar, Danzig, Mandates, Minorities—and such temporary functions as giving an award on the Eupen-Malmedy plebiscite and being the arbiter in disputes over the tracing of frontiers in accordance with the peace treaties, the League is brought into the peace treaties as the body to appoint chairmen of commissions or members of arbitral tribunals failing agreement by other means, and the Court is given compulsory jurisdiction in certain parts of the peace treaties—minor and harmless duties enough, and in the nature of things mostly temporary.[1]

The General Objection

Nevertheless a great deal of adverse criticism has been directed to the fact that the Covenant forms a part of the peace treaties. Here it is necessary to distinguish between various classes of ob-

[1] Schücking and Wehberg, *Die Satzung des Völkerbundes*, 2nd edition, pp. 27-80, have a chapter giving in detail the relations of the League to the peace treaties, minorities treaties, etc.

jections. The simplest is the mere sentiment of dislike of the fact that this connexion exists, without any attempt to explain just what the supposed disadvantages are. People who feel strongly about the peace treaties have a vague idea that the very fact of the Covenant being part of all four of them must somehow be evil in itself. The objection becomes a little more tangible when it is alleged that because the Covenant is part of the peace treaties members of the League must somehow assume responsibility for maintaining and enforcing the latter. This, however, is untrue—a party to one or all of the peace treaties need not be a party to the Covenant, and a party to the Covenant need not be a signatory of any of the treaties. Thus the five ex-enemy Powers were signatories to the peace treaties, but did not thereby become members of the League, whereas there are a number of members of the League which were neutral during the war and have no sort of responsibility or concern for the peace treaties.[1] The Covenant can be and has been revised independently of the peace treaties, and one of the latter (the Treaty of Sèvres) has been wiped out without affecting the League.

DISPUTES, SAAR, DANZIG, MANDATES, MINORITIES

The objection to the League and the peace treaties becomes somewhat more plausible when it takes the form of saying that certain classes of disputes are referred to the League Council or Court for settlement by the peace treaties, and that the League is made responsible for various peace treaty arrangements, such as the Saar, Danzig, Mandates and Minorities. The real objection here, however, is not to the fact that the League intervenes in these matters, but to the nature of the arrangements themselves. Obviously it is better to have disputes settled through the League than by the Allies. Anyone who thought the Saar regime was a

[1] Their point of view is exactly given by Professor W. E. Rappard, in *International Relations viewed from Geneva*, as follows:

"We were fortunate enough not to be drawn into the war. We deem ourselves hardly less fortunate not to have assumed any responsibility for your peace. The less we have to do with the enforcement of its provisions the happier we shall be. May we add that as long as you prefer to display the spirit of predatory victors, rather than that of impartial judges, the League of Nations as a whole, in our modest estimation, has nothing appreciable to gain, but much to lose, by being associated with your action?"

Professor Rappard indeed goes so far as to distinguish between what he calls the "League to execute the peace treaties," confined to the members of the Council, the "League to outlaw war," which hardly yet exists, and the "League to promote international co-operation," which is already practically world-wide and includes states not signatories to the Covenant. This is a striking way of emphasizing certain tendencies in the development of the League, but should not be taken to mean that there is no connexion between these tendencies, still less that there are really three separate Leagues.

good thing would not dream of objecting to its being put under League auspices. It is, indeed, obvious that the League is stultified in proportion as international treaties or arrangements of any kind are withdrawn from the purview of the League. The League is a system, a way of conducting international relations, and the system can become authoritative only in so far as all nations agree to work it and all international business is transacted through it. So far from regretting that the peace treaties refer certain classes of disputes to League bodies for settlement, believers in the League should press for *all* peace-treaty issues being referred to the League, and the League being put in charge of all international arrangements, whether arising out of the peace treaties or otherwise. This, of course, would make even more urgent the necessity for getting all nations into the League, devising some system of regionalization within the League, and giving the Court compulsory jurisdiction.[1]

[1] W. E. Rappard, *International Relations viewed from Geneva*, sums up the whole question in the following judicious terms:

"In calling upon the League to co-operate in the carrying out of the peace treaties, its founders seem to have been actuated by two motives. On the one hand they wished to give it vitality, by implicating it in matters of immediate concern to large portions of mankind. However indifferent those thus affected might be to its main aim as a potential peacemaker, they could not, it was expected, repudiate or disregard it as a piece of importance on the political chess-board of the day. On the other hand the League was used as an instrument of compromise to settle any troublesome questions which threatened to break the unity of the Allied front.

"In the light of the experience of the last six years, it may be said to have at least partly fulfilled both these purposes. The League to execute the peace treaties has contributed its full share to the publicity sought and gained by the League as a whole. Although it could not bring the American Senate to accept the Covenant, it has fostered and maintained interest in the League in many quarters, both official and popular, which might otherwise have remained aloof. But deprived of the immediate co-operation of America, which would undoubtedly have made for moderation, impartiality and justice in the execution of the peace treaties, as it had so conspicuously done in their drafting, the Council has too often used its unbalanced power in the national interest of its members rather than in the general interests of the international community. Thereby it may have lost in public confidence part of what it has gained in public notoriety.

"It should not be forgotten, however, that, had it not been for the League to execute the peace treaties, these treaties would presumably have offended much more harshly against the principles of self-determination, which, in spite of all that may be and has been said in criticism of them, are after all the guiding principles of democratic international justice. Had it not been for this League, which to some extent at least protected their inhabitants, the Saar, Danzig, all Upper Silesia, and the mandated territories would in all probability have been purely and simply annexed by the victors, and the racial and religious minorities would have been subjected to the arbitrary rule of their new masters.

"If therefore, as I believe, the League to execute the peace treaties has weakened rather than strengthened the League as a whole, it has, on the other hand, strengthened rather than weakened the peace settlement as a whole. For the League it is a liability, but for the peace it is, although rather heavily mortgaged, an asset. Europe and the world are the better for the League to execute the peace treaties. But they would, of course, be the better still for a more perfect League to execute more perfect peace treaties."

ARTICLE X. AND STEREOTYPING THE *Status Quo*

At this point, however, the strongest and most intelligible objection is made to the League on the score of its relation to the peace treaties—namely, that Article X.[1] of the Covenant, and the fact that the Allied Powers dominate the League Council, constitute the League an engine for holding down the ex-enemy Powers and stereotyping the *status quo*. This objection, so far as it is valid, would, of course, hold good whether the Covenant were a part of the peace treaties or not. It has been much weakened since Germany entered the Council. It is true that President Wilson did think of Article X. as a direct guarantee of the peace settlement, which he imagined was going to be just and consequently stable, but the text he drafted was considerably modified, and has since in the course of the League's development come to mean much the same as Article XVI., which, in turn, has quite clearly become merely a guarantee, not of the *status quo*, but of the process of peaceful settlement—*i.e.* merely a guarantee that the *status quo* should not be changed by war—and even this proviso is subject to war slipping in through the gap in the Covenant (*i.e.* the Covenant does allow war within three months of the Council failing to reach unanimity or the Assembly the requisite qualified majority in a report accepted by one of the parties to a dispute).[2]

It is also true that the idea of using the League to maintain the treaty settlement lingered in the minds of certain Continental statesmen and publicists. But the attempt to apply this idea in practice was never made, and it is fairly safe to say that the idea has been abandoned. This was partly because Article XIX. of the Covenant explicitly recognizes the necessity for revising treaties from time to time (indeed the Allies, in their covering letter accompanying the communication of the Versailles Treaty to the German Government, met certain German objections to the Treaty by pointing to the League as the instrument for ultimate revision); partly because the Allies had set up inter-Allied machinery of their own for enforcing the treaty settlement; partly because certain of the Allies (Great Britain, Italy) and many

[1] "The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any aggression, or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled."

[2] See below, pp. 359-363, and the chapters in Volume II. on "The Constitutional Evolution of the League," on "Peaceful Settlement of Disputes," "Security and Disarmament," for a further discussion of these points. On Article X. see above, p. 73.

members of the League (South American, " ex-neutral " and " ex-enemy " members) were strongly opposed to any such use being made of the League ; and partly because the League itself, owing to its tendency toward universality (*i.e.* the presence of ex-neutrals and ex-enemies, and the " potential presence " of the United States and Russia—both unbound by and one strongly hostile to the peace treaties), the obligations on which it is based, the rules of procedure and international machinery through which it works and the general attitude of public opinion when a problem is dealt with through the League, was an obviously unsuitable instrument for any such purpose. The League was indeed designed for quite different ends from that of enforcing the peace settlement. The result was that the League during its early years was kept out of Peace Treaty issues altogether, except in so far as specifically provided in the texts of the treaties themselves. The Sèvres Treaty was annulled and Bulgarian reparations settled quite independently of the League. A little later the League was instrumental in practically abolishing Austrian reparations and reducing Hungarian reparations to a mere pittance, while since the entry of Germany it is gradually becoming the medium through which the *status quo* will be changed [1] and even, if necessary, treaties revised, as part of the process of organizing peace.

A LEAGUE OF PEOPLES *v.* A LEAGUE OF GOVERNMENTS

" A League of Peoples " described

A further fundamental objection to the present constitution of the League is that it is a " League of Governments " whereas it ought to be a " League of Peoples." It is hard to get any clear and coherent expression of this view. Perhaps the best [2] is that given by no less a person than Mr Ramsay MacDonald in an article entitled " Internationalism and Socialism," appearing in the April 1924 number of the German quarterly, *Die Eiche*.[3]

[1] See the chapter in Volume II. on " Peaceful Settlement of Disputes " for a discussion on the subject of changing the *status quo* without war, and also below, pp. 347-349, 465, 473.

[2] An interesting though somewhat fragmentary account of the history of Labour opinion on this subject up to 1926 is given in a supplement to the *International Information Bulletin* issued by the Secretariat of the Second International. Mr H. N. Brailsford, in *Olives of Endless Age* (pp. 399-402), argues for a " Parliamentary " Assembly to supplement the existing organization. This point is further discussed in the chapter on " The Evolution of the League " in Volume II.

[3] So that the quotations given are a translation back into English from the German, and not Mr MacDonald's original text. It should be added that Mr MacDonald's public utterances on the League since his practical experience of it show a point of view widely different from that of the article quoted. The latter, however, remains the best available exposition of a rather " left-wing " Socialist point of view both in England and on the Continent.

Mr MacDonald declares that:

"In its present form the League cannot fulfil any of the expectations entertained with regard to it by hopeful people. It is an organization set up by the Powers in order to maintain a political system that is unstable and cannot last; it has been shielded carefully from the influence of the people and of public opinion; it strengthens the power of executives against democracy and reinstalls diplomatic bureaucracies at a time when they are more discredited than ever."

Consequently the Socialist movement has been doubtful whether to improve the existing League by discriminating support or to scrap it and start afresh. Provisionally it has decided to support the League while demanding a drastic revision of its constitution that will "democratize" the League. The Socialist International is really the parent and prototype of what a good League should be:

"Such a League must be democratic and have its roots in public opinion. It should be a Parliament of Nations, a platform on which evils could be openly discussed, and its executives and secretariats should be the eye and the will of the International Parliament. If the objection be made that no nation would surrender its sovereignty in important matters to such a body, the Socialist replies that he would much prefer a body that was free to consider evils, to look for them, discover them and tell the world about them, a body that could make reports and suggestions which would appeal to common sense and to the will for peace of the nations, a body which had no executive power but moral authority—that he would much prefer such a body to one possessing greater nominal power to put through what it wanted, but which as a direct result of its power would be weak, would have to acknowledge the control of its dominant members and to act through machinery that could be thrown out of gear by the slightest hostile touch. A League of this sort, which would begin with sovereign powers of compulsion and therefore be controlled in the first place by the executives and finally by some Great Power, really corresponds to the views of governments that do not believe in any League. . . . What is wanted is a body that is in direct contact with the public opinion of the whole world, a body as free as an international congress, so that it can consider national evils that cause international friction, express its opinion on such matters and appeal to the parliaments of all countries; a body possessing a secretariat which will be its eye and ear, courts which will render judgment on matters brought before them and committees whose task it will be to conciliate and to mediate. This body would be a clearing house of opinions and a court of justice. It would protect the weak against the strong and administer justice which would be independent of the power behind it. Something very different from what Paris has given us!"

A General Comment

In other words, the ideal is a sort of debating society or discussion club, a glorified mixture of the Socialist International and the Inter-Parliamentary Union, with a few courts and conciliation commissions thrown in. The state of mind of those who think as

the author of this article is intelligible enough—they are dominated by the fact that they are an advanced minority, in agreement with minorities in other countries with whom they have been fighting for peace and a new order against their respective governments. They are further dominated by the fact of the world war so that they can conceive of international relations only negatively, as a series of quarrels that must be stopped, points of friction that must be smoothed out and evils that must be put right. But their idea is as though it were proposed to govern England by scrapping Parliament and Whitehall and substituting a caucus of the Conservative, Liberal and Labour parties, together with courts of industrial arbitration and Whitley Councils! The League already includes a Court, arbitral tribunals and conciliation commissions, as part of its machinery. It has given the Inter-Parliamentary Union and the Socialist International an instrument by means of which they can convert their general aspirations into concrete policies.

The Difference between airing Grievances and organizing Peace

But the League is far bigger than this. It is not just a society for airing grievances and giving unasked good advice. Nations might stand this sort of thing occasionally—might even be grateful for it in an emergency—but the idea that they could endure as a permanent institution a body of trouble-hunting, advice-giving Solons in their midst, with a roving mandate to act as a sort of professional conscience for governments, a collective lay papacy, surely argues a lack of sense of humour. What is even more serious, it reveals an utter failure to grasp even the existence of the problem of organizing peace. The whole point about the League is that it is a deliberate attempt on the grand scale to organize the world for peace, and that means organizing on international or rather " trans-national " lines. Disputes are only hitches in the work of organization, although they bulk so large in the eyes of public opinion, particularly just after the Great War. The essential meaning of the League is shown most clearly in the work of the technical and humanitarian organizations and the special arrangements (Saar, Danzig, Minorities, Mandates). But it is also shown in the way the League handles disputes, for almost every dispute successfully settled by the League has left some form of international arrangement or organization as a " precipitate " of the problem solved.[1]

[1] See below, p. 471.

THE IMPORTANCE OF PLEDGING GOVERNMENTS

By founding the League mankind forged a new instrument, a system of pledge-bound governments and permanent machinery for implementing the pledges. All instruments are dead, mere tools to be worked by the human will. And all political instruments must, in the last resort, be operated by public opinion. Public opinion is grossly ignorant about the League, and needs some international machinery for deliberating and informing and expressing itself on international questions. Bodies such as the Socialist International, the Inter-Parliamentary Union, and, in a more limited way, the Federation of League of Nations Societies have grown up to meet this need. Even when public opinion is ripe for action a great deal can be done by " private "—or at least non-governmental—means. Industry, commerce and science, for instance, are rapidly internationalizing the world. But at some stage state action—this is a proposition that no Socialist, at any rate, will be inclined to dispute—becomes necessary to alter the political and legal framework of our society, so as to adjust it to the increasing process of " internationalization." And state action means, so long as states are constituted as they are at present, Government action. International parliaments, or similar bodies, can help to educate public opinion in the right use of the new instrument, but they can never be a substitute for the instrument itself, which is and must remain inter-state—that is, inter-governmental.

THE IMPORTANCE OF EDUCATING AND FOCUSSING PUBLIC OPINION

In other words, the founding of the League in no way detracts from the importance of such bodies as the Socialist International and the Inter-Parliamentary Union, but, on the contrary, gives them a fresh reason for existence. They help to prepare public opinion on international questions by discussing and formulating policies, which are then pressed on their governments by certain sections of public opinion in the countries concerned. When the governments have been won over to action they can act through the League. The existence of certain pledges and certain machinery helps public opinion to urge certain kinds of action and makes it difficult for governments to resist such action.

THE DISTINCTNESS AND COMPLEMENTARY NATURE OF THE TWO TASKS

Of course there is an infinite amount still to do both in the way of preparing and bringing to bear public opinion and improving and making a reality of the pledges by which governments are bound and the machinery through which they act. Both educating

public opinion and government action are necessary in the process of organizing the world for peace. The latter, indeed, is simply the effective expression of the former. But they are separate functions.

Democratizing the conduct of foreign policy by the countries members of the League may be an excellent thing, and may also improve the League as the "action-taking" machinery of the governments in the international field.[1] But this task must be kept carefully distinct from the equally important but quite separate problem of setting up or improving "opinion-forming" international machinery by which policies may be shaped on the basis of the pledges and machinery of the League. The existence of the League has made it more necessary than ever to find ways by which international issues can be discussed and thrashed out internationally. But the machinery for educating public opinion—such as the Socialist International, the Inter-Parliamentary Union, the Federation of League of Nations Societies and the numerous private bodies concerned with foreign affairs—must be kept separate from and independent of the machinery for the taking of action by governments (in response, it is to be hoped, to the pressure of educated opinion), or we shall fall between two stools and get something that will fulfil neither purpose.

Democratizing the League on the lines of the article just quoted would be equivalent to destroying the League by getting rid of the one thing that matters in the League. We already had the Socialist International and the Inter-Parliamentary Union before the war, and their part is essential. But the war showed, and that was the biggest lesson learned at the Peace Conference, that it was essential to fetter the governments themselves, to tie them up with each other and to a certain code of conduct by formal, binding pledges. It was just this system that constituted the existing nations into a League—a League of Nations as distinguished from a League of M.P.'s or of political parties or private individuals. The proposed debating-society League could not even attempt most of what the existing League has achieved precisely because it is an intergovernmental agency. The proposal would, in fact, have the reactionary effect of restoring to governments their untrammelled, anarchic sovereignty, whereas by entering the League they have,

[1] It may lead, for instance, to all-party delegations at the Assembly, to the adoption and direct reference to legislatures of conventions by a two-thirds majority, as in the International Labour Conference, and eventually perhaps to delegations varying in size and each delegate possessing a vote. See below, pp. 138-139, 461-462, as well as Volume II. See also H. N. Brailsford's *A League of Nations*.

to some extent, given it up and become " members one of another."

THE LEAGUE AND SOVEREIGNTY[1]

These reflections indicate the answer to two further objections —namely, that the League abrogates sovereignty or, conversely, is doomed to fail because based on sovereignty and so a contradiction in terms. It would be tempting to let these objections cancel each other out and dismiss the subject. But this would hardly be doing justice to its importance. The first point to note is that the Covenant never mentions sovereignty, but prefers to be guided instead, as was pointed out at the beginning of this chapter, by realities such as " full self-government." Secondly, although all States Members of the League are convinced that they have retained their sovereignty in all its majesty, they have, by signing the Covenant, bound themselves in ways that would before the war have been considered an infringement of sovereignty. They have agreed to submit all disputes—no exception being made for matters concerning " honour and vital interests "—to some form of peaceful settlement and not to go to war against a state which accepts a League award. They agree not in any case to resort to war until three months after the rendering of such an award. They agree to exert coercion (possibly armed action, and at any rate some kind of economic pressure) against a state resorting to war in defiance of these conditions. And they agree to accept the decision of the League Council on whether a matter in dispute is or is not a question of domestic jurisdiction in international law. This surely is a list—and it is not exhaustive—of " infringements of sovereignty " that would have been rejected with horror and indignation by pre-war governments. Yet modern statesmen accept it without a tremor—with, indeed, unquestioning faith that their " sovereignty " remains unaffected.[2]

[1] See also below, pp. 344-347.

[2] On the other hand, Philip Baker, in " The Making of the Covenant," writes: " If the Covenant is examined with care, it will be seen that in every case in which the Council and the Assembly are charged with definite duties their function is not to order action, to take final decisions, or to legislate; it is, on the contrary, merely to recommend to the Governments of the Members a course for their common adoption. . . . How little the League is a super-state, executive and coercive, will be shown by a brief review of the stipulations of the Covenant. Under Article VIII. the Council is to formulate the plans for the reduction of armaments, which have no force until ' adopted ' by the several governments. Under Article X. the Council is to ' advise ' how the obligations contained therein shall be fulfilled. Under Article XIII. the Council is to ' propose ' the steps to be taken should a state fail to carry out an arbitration award or judicial decision. Under Article XVI. it is to ' recommend ' what armed force the Members of the League

The truth is that the term "sovereignty" does not correspond to any clear practical concept, but to a vague, though often passionate, feeling. "Sovereignty" is a mystic sentiment expressed in abstruse legal doctrines, a kind of lay theology growing out of the old dogma of absolutism and grafted on to the new religion of nationalism. The idea has had its uses, historically, but is no longer susceptible of exact definition or consistent application to the relations of modern national communities. For instance, each of the forty-eight United States of America, or of the twenty-two Cantons of Switzerland (not to mention Lichtenstein, Luxemburg, Monaco, the republics of Andorra and San Marino), calls itself "sovereign," whereas Canada, Australia, South Africa and New Zealand are not "sovereign." A state retains its sovereignty intact when it enters the League, but the mutual relations of member states differ widely from the system of international relations that obtained before the war: moreover, some sovereign states are not eligible for membership, while some member states are not sovereign. In short, sovereignty may mean a variety of things. Certain concepts of sovereignty do not present any obstacle to organizing the world for peace, while others are so anarchic as to be incompatible with the progress or even the maintenance of civilization. The wisest course would seem to be to let sovereignty take care of itself and never admit it alone as a valid argument against a step desirable on other grounds. In this way we can push ahead with the task in hand, eschewing metaphysical controversies and arguing for or against any given measure only on the plane of specific political and economic advantages or drawbacks.

POLITICAL, NOT CONSTITUTIONAL, CHANGE MOST WANTED

The one thing of prime importance is a change in the political attitude of states, which must come to feel that they are a part of the League, that the League is theirs and links them up with one another indissolubly. Out of some such feeling—the only one consonant with the facts—about the world we live in the "peace mind" will grow, and the existence of the League will then show how to express the peace mind in a peace policy. The obligations

ought to contribute for the coercion of a Covenant-breaking state; but there is no obligation on any Member to accept either this recommendation or any other of these recommendations. Under Article XVII. the Council is to 'recommend' what is to be done in a dispute where a state not a member of the League is concerned. Under Article XIX. the Assembly has the right to 'advise' the reconsideration of treaties which have become inapplicable. . . . The whole conception of the Covenant is to secure co-operative action by free and common consent."

and machinery created by the Covenant constitute an instrument not yet properly used or even understood, and with almost unlimited powers of development. There have already been formal amendments, and the League with its Covenant is developing along lines its founders scarcely foresaw—as is the way with human institutions. But what is most needed to-day is not that the Covenant should be amended, but that governments and public opinion should understand what it implies.

THE QUESTION OF AMENDMENTS

In the early days of the League, amendment of the Covenant was much discussed, both inside the Assembly and out, but on the whole proposed amendments have cancelled each other out and the process of time has shown that the foundations of the League were well and truly laid and the Covenant the fruit of remarkable political sagacity. On the whole, too, the view expressed at the first and second Assemblies has been justified—namely, that the Covenant was, of course, an experiment, and as such both incomplete and tentative, but that the time for revision would come only after a few years' experience had shown what needed revising and the completion of the League's membership made it possible to take account of every point of view. Revision should come naturally, as the result of completing the League's membership and using the League to the full. This double process is already producing reservations, interpretations, piecemeal amendments and all kinds of supplementary agreements and conventions intended to carry out the aims of the Covenant. At some stage in this process —roughly determined as the time when all nations are in the League—the need will probably be felt for overhauling the whole constitution of the League and remodelling the Covenant, so as to eliminate confusion and inconsistencies and bridge gaps. But the temptation to indulge in "constitution-mongering" must be guarded against—that is, the belief that tinkering with the Covenant or inventing brand-new constitutions can somehow produce a League that will function automatically, set the world right all by itself from Geneva, and dispense with the necessity for enlightened foreign policy by governments and eternal vigilance on the part of the governed.

CHAPTER VI

THE ASSEMBLY AND COUNCIL

ORIGIN AND IMPORTANCE OF THE ASSEMBLY AND COUNCIL

ALTHOUGH the Assembly and Council of the League may be regarded as a development of the Concert of Europe, or Concert of the Great Powers, they differ from the latter in several important respects. In the Assembly and Council a compromise has been achieved between the claims of great and small Powers. The Assembly and Council have clearly defined procedure, hold regular meetings, and are linked up with the other parts of a far-reaching complex system, touching every aspect of international life. They share with other parts of that system the great innovation which so sharply distinguishes post-war international relations from the conditions that obtained in 1913: whereas the Concert of Europe worked in a haphazard manner and might or might not meet at a crisis, according as the Power to whom the crisis was due chose or did not choose to attend, the members of the League are *pledged* not only to attend the Assembly or Council but to recognize the right of those bodies to deal with disputes, impose delay, call for sanctions against an aggressor and discharge a number of important functions in the field of international co-operation.

The Assembly and Council are the fundamental organs of the League, whose constitution and functions are laid down in the Covenant, and through which, in the words of Article II., "the action of the League under this Covenant shall be effected." They can not only deal with any aspect of the League's work, either political, administrative or technical, but develop and even remake the League itself.

ASSEMBLY AND COUNCIL: MUTUAL RELATIONS AND GENERAL DESCRIPTION

NATURE OF EACH

The Assembly and Council, like their ancestor the Concert of Europe, are international conferences of government representatives. The Assembly is a general conference of the States Members of the League, in which every state has one vote and may have up to three delegates. The Council is a group of at present fourteen

governments members of the League—namely, the five Great Powers (France, Germany, Great Britain, Italy and Japan), as permanent members, and nine other members elected from time to time by the Assembly.[1] Each State Member of the Council has one vote and is represented by one delegate. Council delegates generally act as the head of their respective Assembly delegations in the case of European countries, and are usually foreign ministers or, in the case of extra-European countries, ambassadors or ministers resident in Europe. The Assembly delegations vary in composition according to the constitutional practice of the countries concerned, but the general aim is to combine the necessity for the delegation expressing the policy of the government of the day with the desirability of making its composition as broad and democratic and truly representative as possible of the public opinion of the whole country.

Regular and Extraordinary Meetings

The Assembly decided at its first session to meet annually on the first Monday in September (the Covenant states that it shall meet " at stated intervals and from time to time as occasion may require "). The Council meets regularly every three months—namely, in March, June, September and December (the Covenant states that " the Council shall meet from time to time as occasion may require and at least once a year ").[2]

An extraordinary meeting of the Assembly must be summoned at the request of the majority of the States Members of the Council or Assembly. One such meeting was held in March 1926, at the request of the Council, to admit Germany into the League. An extraordinary meeting of the Council must be summoned by the President of the Council at the request of any member state, or in case " of war or threat of war " under Article XI. of the Covenant " the Secretary-General shall, on the request of any member of the League, forthwith summon a meeting of the Council." Several extraordinary meetings of the Council have been held.

Assembly and Council Presidents

The Assembly elects its own President at each session. The representatives on the Council become President by turn according to the alphabetical order of their countries in French.

[1] After the Eighth Assembly these Powers were Canada, Chile, China, Colombia, Cuba, Finland, Holland, Poland and Roumania.

[2] There has been a good deal of discussion on a proposal made by Sir Austen Chamberlain to reduce the number of meetings to three, on the ground that foreign ministers had not the time to come to Geneva four times a year. See below, p. 134.

THE UNANIMITY RULE; PROS AND CONS

Except where a stipulation to the contrary exists in the Covenant or some other treaty, a decision of the Assembly or Council must be taken by a unanimous vote of all the states present at the meeting. The exceptions are (1) the admission of new members, which requires a two-thirds vote of the Assembly; (2) amendments to the Covenant, which require a three-quarters majority of the Assembly, including all the members of the Council, for voting, and unanimity in the Council and a majority of the Assembly for ratification; (3) election of temporary members to the Council, which requires a mere majority of the Assembly; a two-thirds majority is required for declaring a temporary member re-eligible immediately on the expiry of its term of office, or for holding a "general election" of all temporary members, or to fix "the rules dealing with the election of the non-permanent members . . . particularly . . . with regard to their term of office and the conditions of re-eligibility"; (4) an increase in the number of the members of the Council, requiring unanimity in the Council and a majority of the Assembly; (5) questions of procedure, including the appointment of committees, which require a mere majority of the Council or Assembly; (6) votes recording a decision on a dispute or the application of sanctions, where the votes of the parties to the dispute are not counted in the Council; in the Assembly the votes of the states represented on the Council and a majority of the other states present are required, exclusive in each case of the parties to the dispute; (7) matters concerning the Saar, which are settled by a majority vote of the Council; (8) questions arising out of the sections of the peace treaties relating to League inspection of the armaments of the defeated Powers: here again a majority vote of the Council only is required and in no case are the votes of the defeated Powers to be counted; (9) election of judges to the Court, which requires a mere majority in both the Council and Assembly; (10) appointment of the Secretary-General, which is done by the Council, acting unanimously, with the approval of a majority of the Assembly.

The so-called "unanimity rule," in spite of the numerous and important exceptions and loopholes it allows, has been much criticized. Critics often tend to lose sight of the fact that the League is an association of independent states and so must proceed by way of unanimous compromise and not by majorities imposing decisions on minorities. No state to-day will put itself in the position of being legally compelled to spend money or take action

or commit its national policy in some way by a vote of foreign Powers, just as, for instance, in industrial disputes—such as negotiations between bodies of employers and workers or rival trade unions—any settlement must be agreed to by all parties and not imposed on some by the rest.

Nevertheless the provision as to unanimity in the Covenant is sometimes considered to be too rigidly framed, and contrasted with the constitution of the technical organizations and the references to the League in other parts of the peace treaties. There should be more exceptions and a greater elasticity with regard to the unanimity rule,[1] it is urged, so as to make it impossible for any one state to veto a matter in which its collaboration is not essential (if it is essential this state will have the power of veto in fact whatever the provisions may be on paper). One state on the Council, for instance, should not be able to hold up the report of a committee or other body by refusing approval, in order to extort a *quid pro quo* elsewhere. It also seems undesirable, in this view, that whereas a mere majority, or in some cases a three-quarters majority, of the Assembly is required, for such matters as amendment of the Covenant and increasing the membership of the Council, a unanimous vote of the latter body should be necessary. This provision means that a member of the Council has the power of veto for amendments to the Covenant and increases in the membership of the Council. Attempts have been made to abuse this power (notably by Spain and Brazil) and the position is, in any case, objectionable on principle. It was designed of course to protect the position of the Great Powers, but experience in the technical organizations (where this formal power of veto does not exist) has already shown that the Great Powers are quite strong enough to protect themselves without any such extraordinary privileges. Moreover the required unanimity on the Council in this case is in glaring contrast to the majority rule that obtains on such equally important matters as the Saar and inspection of armaments. So long as these questions were dealt with by the Allies in the Council against Germany as a non-member the anomaly did not give rise to great practical difficulties. But it

[1] General Smuts, it will be remembered, and after him President Wilson, suggested that a minority of not less than three should be required to prevent a decision. So far as the Great Powers are concerned, it is arguable that inability by one of them to get two other members of the Council on its side is inconceivable, and that their position would consequently be safeguarded. On the other hand, there have been occasions—notably Swedish opposition to permanent membership for Brazil and Spain—when but for the one just member the Council would have sold the pass. But to this it may be replied that Brazil and Spain were able to obstruct precisely because of the right of veto.

was always morally indefensible and the moment Germany became a member of the League was open to the most serious practical objections. A " loosening up " of the unanimity rule so as to make it impossible for any state to veto questions in which it is not directly concerned, while allowing it to protect itself against being committed to courses of action of which it does not approve, is a reform that the expansion of the League has made necessary.

RELATIONS AND COMPETENCE

The relations between the Assembly and Council have purposely not been closely defined in the Covenant, and both are competent, in the words of Article III., to " deal . . . with any matter within the sphere of action of the League or affecting the peace of the world." Under Article IV., Paragraph 5, any member of the League whose interests are specially affected by a question which the Council is considering, and which is not represented on the Council, shall be invited to a seat and a vote while that question is being discussed. Under Articles XV. and XVII. any party to a dispute whether a member of the League or not shall be invited to a seat but not a vote on the Council while the dispute is under consideration.[1]

Under these articles, furthermore, a dispute may, within fourteen days of its submission to the Council, be referred to the Assembly at the request of either party, and may at any time be referred by the Council itself. The framers of the Covenant also assigned certain special functions to the Assembly and Council. For the rest, true to the principle that their object was merely to set up certain political institutions which should work out their salvation and adjust their relations by trial and error, they left the Assembly and Council a free field.

(a) *Division of Functions*

The division of functions between the two may roughly be described as follows. The Assembly is the general conference of all States Members of the League, meeting once a year, voting the budget, determining the general lines of work for the year to come

[1] Article XVII. is somewhat loosely worded, and says that a non-member state may be invited to " accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles XII. to XVI. inclusive shall be applied with such modifications as may be deemed necessary by the Council." It is arguable that this wording gives the Council the legal right to grant such a state not only a seat but a vote on the Council, in which case, of course, the other party to the dispute would have to be granted the same conditions and the whole procedure would approximate to that provided for in Article XI.—namely, with the Council having merely mediatory powers. It is, however, politically improbable in the highest degree that the Council would ever adopt such a view of the situation.

and reviewing what has been done in the previous year. It may be resorted to for the settlement of disputes, but this is not done habitually. The Council is a small conference or executive committee of fourteen to twenty states (depending on the number of states attending in addition to the regular members of the Council), meeting at least every three months and supervising the execution of League work along the lines laid down by the Assembly. It is habitually resorted to for the settlement of disputes in addition to its supervisory and executive functions.

(b) *The Constitutional Compromise*

The " functional " reason for having both an Assembly and a Council is made fairly clear by this division of duties and activities. The two correspond, roughly, in international life to Cabinet and Parliament in national government. But there is also a constitutional reason : the League is an inter-state organization and has had to solve the fundamental problem that has always confronted any attempt at inter-state organization—namely, how to find a compromise between the claims of great and small states. In the case of the United States, where the object aimed at was the setting up of a union with a federal government, the compromise was achieved by giving the component states representation according to their population in the House of Representatives, and an equal number of votes each in the Senate. In the case of the League, whose founders aimed only at an association of states for conciliation and co-operation, and not at any form of federation or delegation of powers by the component states, the compromise consists in giving all the member states an equal vote in the Assembly, but allowing the Great Powers a permanent seat on the Council, to which the Assembly elects a contingent of smaller Powers from time to time, and of which any state particularly interested in the matter at issue becomes *ad hoc* member (without a vote if it is a party to a dispute under Article XV.).

(c) *Development of Mutual Relations*

The subject of how the relations between the Assembly and Council have developed and what they are at present is interesting, and has been much discussed. The first thing to realize is that there can be no finality in this field, for no one can foretell what may be the nature and international standing of the Assembly and Council even two decades hence, while their mutual relationship depends upon a number of continually varying and unpredictable factors, such as the membership of both bodies, the relation of small Powers to great and the general spirit informing

the community of nations. The League is still an experiment far too new, too small in achievement and too big in promise, to make its past any but the roughest criterion of its future. Bearing this fact in mind, a glance at the development of the relationship between the Assembly and Council during the first few years of the League's existence nevertheless suggests some tentative conclusions.

The idea of breaking up the original vague conference postulated in the early drafts of the Covenant into an "executive council" and a "general conference" or "Body of Delegates" was suggested by the analogy of war conditions (carried over into the Peace Conference procedure) when the Great Powers took the important decisions and the rest played the part rather of auxiliaries and advisers than of equal partners. Consequently—as the quotations from the various drafts of the Covenant given in the previous chapter show—the Assembly was subordinate to the Council in the eyes of the chief members of the League of Nations Commission, while in the Council the Great Powers were to be predominant. In fact, in the Hurst-Miller draft, presented by Wilson and accepted at the Conference as the basis for its discussions, the Great Powers alone were to be members. Only after strenuous opposition by the small states was the Assembly allowed to elect a contingent of smaller Powers to the Council, and then only on the understanding that they should be in a minority of one. In the words of Professor Philip Baker (*op. cit.*):

"those who were responsible for this [the Hurst-Miller] draft and a number of other members of the Commission, including representatives both of the great and smaller Powers, were inclined to regard the Assembly as a necessary evil. They all recognized that without it the League could not come into effective being, but they also believed that it would be very difficult to work, that it would probably waste a great deal of time, and that it could not be made an effective instrument, either for representing the general political forces of the world, or for promoting international co-operation. There is no doubt that ideas of this sort lay at the root of the proposal that the Assembly should meet only once in four years, and that they also underlay the original suggestion that the 'Body of Delegates' should consist only of two representatives of each Member of the League. . . .

"As the work of the Commission progressed . . . the conception of the Assembly was gradually strengthened and clarified in the minds of the members of the Commission, until they came to regard it as the body which it has in practice actually become—a sort of semi-parliamentary conference, composed of responsible statesmen, who represent the governments of the members."

A good deal of the original attitude toward the Assembly, however, lingered on in the framing of the Covenant, which mentions

that body briefly and vaguely, mostly as an alternative to the Council, and charges the latter with a number of weighty functions. Anyone reading the Covenant would readily conclude that in the minds of its framers the Council was the most important organ of the League.

The same idea existed in Allied quarters in the early years of the League and was harped on not too tactfully by some of their representatives on the Council at the first two or three meetings of the Assembly, which was further not soothed by the suggestion that it should hold a session only every two years. In those days the Council was an inter-Allied body, while the Assembly was international, and the words " inter-Allied " and " international " connoted a good deal more then than they do now. In those days " inter-Allied " meant the dictatorship of the Great Powers, the carrying over into the peace of the methods and spirit of war time and the exclusion of the ex-enemies from the League, whereas " international " stood for the rights of the small nations, the methods of conciliation and co-operation, and the desire for immediate universality of the League.

Thus the Assembly came to stand for the " idealists " and the Council for the " practitioners " of the League in the eyes of public opinion. The Assembly represented the small Powers and it was freely assumed that the latter stood for a somehow higher conception of international relations than the great. At the same time the men sent by the Great Powers (*e.g.* Lord Balfour, Leon Bourgeois) were not such fearful fellows after all, and being in any case only second-rank statesmen were hardly in a position to overawe the Assembly, while Lord Robert Cecil, with all the great prestige accruing from the fact that he was one of the fathers of the Covenant, was at that time, disguised as a South African, very much on the side of the Assembly angels. In the early days of the League there was very little routine and executive work to do, and the Council had few and unimportant tasks, while the League was so new that the general debates and discussions of the Assembly, the gradual completion of the League's structure and the admission of new members interested and impressed public opinion.

Thus the Assembly began to gain in relative importance. A good example is the question of disarmament. According to the Covenant the Council is to formulate plans for the reduction of armaments and is to be aided by an Advisory Commission. The Council appointed a Commission composed of the military, naval and air representatives of its own members: in other words, a

General Staff, Admiralty and Air Ministry replica of the Council itself, and about as useful for formulating plans for disarmament as would be a committee of butchers to promote vegetarianism. The First Assembly pointed out this fact in veiled and courteous terms, indicating that disarmament was not a purely technical question, but had certain fundamental social, economic and political aspects. It therefore asked that a Mixed Commission should be set up, composed of a few eminent politicians attending in a private capacity, economists, financiers, representatives of labour and capital, as well as military, naval and air officers. The Council accordingly appointed this body, the so-called Temporary Mixed Commission, which was thereafter the real leader in the formulation of plans of disarmament. These plans were in turn merely passed on by the Council to the Assembly, which made them the chief topic of discussion at one session after another, and so became responsible for every new development in the question, such as the linking up of security and disarmament in the famous Resolution 14 of the Third Assembly, the draft Treaty of Mutual Assistance at the Fourth Assembly, the Geneva Protocol at the Fifth, and the re-examination of the political background of disarmament at the Eighth.

That is, so long as the question of disarmament was treated on the basis of a general arrangement covering the whole world, although allowing for local conditions, and whenever some new principle or idea was put as the basis of disarmament work, such as emphasizing the existence of a political, social and economic aspect at the First and the developments already mentioned at the Third, Fourth and Fifth, the Assembly became important and was much in the public eye.

By the Sixth Assembly, however, a new development had set in. The Great Powers had begun sending their foreign ministers to the Council and Assembly. From the point of view of the League this was a clear gain, but it meant the enhanced importance of the Great Powers in League affairs, and it incidentally meant that the new men brought with them a good many of the old ideas. Sir Austen Chamberlain, for instance, has never understood the League as did Lord Balfour, and in spite of his undoubted good will represents essentially the pre-war outlook on international relations. Also he effectively subdued Lord Robert Cecil, who, after he became a member of the Government, never for obvious reasons played the part in the Assembly that he did as a more or less free-lance delegate. Add to this that the variety and import-

ance of the business of the Council greatly increased and that whereas the League's current activities were kept going there was no tendency to push ahead with any big new idea, but rather an inclination to deal with fundamental questions such as arbitration, security and disarmament by piecemeal methods and local arrangements in preference to general treaties, and it is obvious why the Assembly, from 1924 to 1926, gradually lost in relative importance, although the League as a whole gained. Normally, the admission of an important new member, such as Germany, would have restored the lustre of the Assembly. But this admission at the same time marked the turning-point in the relations between Germany and the Allies, which had been conducted entirely outside the League, and therefore meant that Germany's admission in the form which it took appeared to some extent as an inter-Allied arrangement forced on the rest of the League by a few Great Powers. This accounted for the feebleness of the Seventh Assembly, just as re-examination of the political basis of disarmament was responsible for the vigour of the Eighth. Each of the two League organs responds to the world situation at the time it meets—sometimes that situation calls for a display of energy by the Council, sometimes by the Assembly. Sometimes it is such that one or the other fails to function.

At the same time the contrast between inter-Allied and international has steadily become weakened in proportion as the war-time divisions became irrelevant to present-day issues, as sentimental cohesion between the Allies—never very strong—weakened, and as co-operation between them and ex-enemies and ex-neutral states increased. With the admission of Germany as a permanent member the Council ceased being an inter-Allied body, while the increase of its membership to fourteen meant that the Great Powers, even including Germany, were in a minority of five to nine. Meanwhile, although the work of the Council had become greater both absolutely and relatively, it and the Assembly together no longer account between them for as high a proportion of the League's activities as formerly. The tendency is for the technical and advisory organizations to increase in importance and autonomy as the work of each strikes deeper roots into the past and ramifies more widely in the life of the world to-day. The work of disarmament is now in the hands of a big Preparatory Committee of twenty-one governments, and although the debates of the Assembly on the subject are still important they are not as important as they were, while the rôle of the Council has become in-

significant. The economic organization, with its strong Preparatory Committee, big Economic Conference and subsequent strengthening of its regular machinery, has become a body more important and more independent of the Assembly and Council than before. The same applies to the Health and Transit organizations and, in general, to every branch of the League's activities. As the League develops and its activities become more complex and far-reaching there is inevitably the tendency to decentralize, and no one League body or meeting can any longer be pointed to as of decisive importance, although the Assembly still remains the nearest approximation to the embodiment of the whole League's authority. Hence, while the relations of the Assembly and Council have been changing, the position of these bodies in the League as a whole has at the same time changed, as well as the composition of the Council, or, in other words, the terms of the problem have altered entirely. There is no reason to believe that this evolution will stop within any future we can foresee, and, on the contrary, there are certain indications that it will continue at an increasing pace.[1]

So much for the facts, so far as complex and continually changing situations can be summarized in a few bald lines. Inadequate as this summary is, it suggests the following tentative conclusions. The Assembly and Council are and are meant to be interdependent and complementary, although each has distinct functions. Therefore it is wrong to believe that one can be strengthened at the expense of the other. The Assembly takes certain general resolutions indicating the broad lines of the League's work. The Council as the executive and supervisory body is responsible for the efficient conduct of the League's work along these guiding lines. The more effectively the Council discharges this duty the stronger will be the position of subsequent Assemblies. Similarly the more efficiently the Council settles international disputes the better will be the atmosphere and the more favourable the conditions generally for the work of succeeding Assemblies and, in general, the higher the authority of the League.

In general the Council bulks larger when routine and executive work or disputes are the most important activities of the League, and the Assembly when the chief work of the League at the moment is launching some general idea, such as for instance arbitration, or framing an important general treaty or passing a weighty amendment to the Covenant or receiving a demand for admission from some important state. The two bodies are

[1] See the chapter on "The Constitutional Evolution of the League" in Volume II.

complementary, not rivals. Both, and with them the whole League, would be weakened if and in so far as the Great Powers attempted to form a caucus or deal with questions by the discredited methods of secret diplomacy and intrigue, or refused to bring disputes before the League, or generally played fast and loose with their obligations under the Covenant. But it must be remembered that Great Powers do not as such hold certain views which distinguish them from the whole body of small states: on practically every question groups of both great and small Powers will be found on each side.

The tendency to think of the Assembly and Council as rivals and of great and small Powers as forming distinct political camps is often accompanied by the belief that the small Powers are in some mysterious way "better" than the great. Their temptations are, it is true, different, but who shall say that one is more backward in yielding to them than the other? The lessons of interdependence, the necessity for peaceful settlement of disputes and co-operation generally should theoretically be more obvious to the small nations, but against this must be set their parochialism and the broader outlook necessitated by the wider interests of the Great Powers. It comes easier for instance to a British statesman to think in terms of the world and its conditions than it does to a Czechoslovak or a Bulgarian—even easier perhaps in some respects than to a Swede. In general it is perhaps fair to say that the sins of the Great Powers are in the direction of arrogance, while those of the small Powers are cowardice and a kind of narrow self-sufficiency and indifference to all but the interests of the village pump. The besetting sin of the Latin Americans would appear to be a hankering for elections to presidencies and vice-presidencies of committees and sub-committees, with no relevance to the fitness of their candidates or the objects and work of the bodies concerned, but merely a disinterested thirst for glory. Those who believe that the behaviour of the Council at the time of Germany's admission was an exhibition of a kind of international policies and standards that it had been hoped were impossible within the League can draw no comfort from the utter pusillanimity of the Assembly at the time.

If these conclusions are agreed to it follows that the real objection—if there is an objection—to the enlargement of the Council was not that this would strengthen that body and hence weaken the Assembly—an argument often, but it is submitted erroneously, advanced—but that the circumstances of this enlargement and the subsequent composition of that body strengthened a tendency to the formation of an inner ring of Great Powers who, although

members of the League, pay scant attention to its procedure and obligations when settling between themselves by private conversations and intrigues matters that should be dealt with through the official League organs.[1] In other words, if the objection lies it is because the Council has been weakened, not strengthened.[2] Indeed the small states who at the Seventh Assembly expressed their alarm at the strengthening of the Council *vis-à-vis* the Assembly were equally alarmed at the Eighth Assembly over the suggestion to cut down Council meetings from the present four to three meetings a year. They saw in this a tendency to subordinate the meetings of the Council to the convenience of the foreign ministers of the Great Powers, which they considered to be a weakening of the Council and thereby of the League. In other words, they felt that the Council needs protection against the domineering tendencies of the Great Powers in just the same way as the Assembly, and that the weakening of the one is just as bad from the point of view of the powers of the League as the weakening of the other.

THE ASSEMBLY

AGENDA

According to No. 4 of the Assembly's Rules of Procedure :

"1. The agenda shall be drawn up by the Secretary-General with the approval of the President of the Council. The complete agenda shall be circulated as nearly as possible four months before the date fixed for the opening of the session.

"2. The agenda of a general session shall include :

"(*a*) A report on the work of the Council since the last session of the Assembly, on the work of the Secretariat, and on the measures taken to execute the decisions of the Assembly;

"(*b*) All items whose inclusion has been ordered by the Assembly, at a previous session;

"(*c*) All items proposed by the Council;

"(*d*) All items proposed by a Member of the League; and

"(*e*) The Budget for the next fiscal period, and the report on the accounts of the last fiscal period.

"3. Any Member of the League may, at least one month before the date fixed for the opening of the session, request the inclusion of additional items in the agenda. Such items shall be placed on a supplementary list, which shall be circulated to the Members of the League at least three weeks before the date fixed for the opening of the session. The Assembly shall decide whether items on the supplementary list shall be included in the agenda of the session.

"4. The Assembly may in exceptional circumstances place additional items on the agenda; but all consideration of such items shall, unless otherwise

[1] See below, pp. 455-460.

[2] On the whole question of the relations between the Assembly and Council and their development, see Professor W. E. Rappard, "The Evolution of the League of Nations" (*Problems of Peace*, 2nd series, being the Proceedings of the Geneva Institute of International Relations for 1927).

ordered by a two-thirds majority of the Assembly, be postponed until four days after they have been placed on the agenda, and until a committee has reported upon them.

"5. No proposal for a modification of the allocation of expenses for the time being in force shall be inserted in the agenda, unless it has been communicated to the Members of the League at least four months before the date fixed for the opening of the session."

Credentials, Committees, Elections

The Assembly meets for about one month, and is opened by the acting president of the Council (which generally begins its session a few days before the Assembly and sits at intervals during the period of the Assembly meeting). The Assembly's first task is to elect a president and six vice-presidents, as well as constitute itself into six committees and elect a chairman and vice-chairman for each (in addition, of course, to dispatching such routine business as verification of the credentials of the delegates and organizing the Assembly "bureau" or General Committee, which is made up of the president, vice-presidents and chairmen of committees[1]). The great number of Assembly vice-presidents is due to the desire to satisfy the ambitions of as many delegations as possible, for it is considered an honour for a country to have a delegate elected to one of these posts. The division into six committees, on the other hand, has been found the most practical way of dealing with the agenda of a full meeting of the Assembly. The work of the committees is divided up as follows: First Committee, constitutional and legal questions (amendments to the Covenant, questions of procedure, methods for the peaceful settlement of disputes, etc.); Second Committee, technical organizations—namely, health, communications and transit, economic and financial, as well as economic and technical questions generally; Third Committee, reduction of armaments, sanctions, security, etc.; Fourth Committee, budget questions, allocation of expenses, etc.; Fifth Committee, social and humanitarian questions, such as traffic in opium and dangerous drugs, traffic in women and protection of children, refugees, intellectual co-operation, etc.; Sixth Committee, political and minority questions, such as admission of new states, mandates, procedure in minorities questions, political disputes.

[1] The tradition is now well established that the President of the Assembly is to be chosen from a small country not on the Council. On the other hand, representatives of the Great Powers are almost invariably elected presidents of committees (the one exception was the case of Italy, when she was bitterly unpopular at the Assembly during the Corfu affair). Consequently the "bureau" reflects the political constellation that obtains in the Council and sometimes uses its considerable powers to keep the Assembly from taking up some matter which the Council would rather have left alone.

Each delegation appoints one of its members to each committee; consequently the committees are replicas in miniature of the whole Assembly. Consequently, too, each Assembly delegation as a rule consists of six members—three delegates and three vice-delegates. The latter cast the votes of their delegations in the committees on which they sit and are allowed to address the Assembly on the subjects with which their committees are concerned. In addition to delegates and vice-delegates most delegations include legal and technical advisers, secretaries, experts, etc. Altogether the number of those directly concerned with the Assembly must be nearly a thousand. In addition there are from three to five hundred pressmen and another thousand or so of spectators, comprising everything from the mere tourist and specimens of the genus crank in all its wild luxuriance, through representatives of international organizations and associations of all kinds, lobbyists for minorities and other groups, M.P.'s and distinguished visitors, to the more or less camouflaged semi-official observers of non-League states.

The Secretary-General's Report

After the first two days, devoted to the preliminaries already described, the Assembly takes about a week for the general debate on the report of the Secretary-General concerning the work of the Council and subsidiary organizations in the preceding year. This debate may give rise to resolutions, which are referred to the proper Assembly committees. In this way what practically amounts to additions to the agenda may be made.

The last part of the debate on the Secretary-General's report coincides with the beginning of the committee discussions, the Assembly sitting in the morning, committees in the afternoon. After this comes a period in which only the committees sit, and finally the Assembly begins its meetings again, to receive the reports of the committees and to hold its concluding session after all these reports have been adopted.

The Question of Publicity

The meetings of the Assembly and the full committees are public,[1] but the former—except for the initial debates on the Secretary-General's report—are generally a pure formality, as all the work is done in the committees. The latter show a growing

[1] According to the Rules of Procedure:

"The Assembly may decide that particular meetings shall be private.

"All decisions of the Assembly upon items on the agenda, which have been taken at a private meeting, shall be announced at a public meeting of the Assembly"; whereas "Each committee shall meet in private unless it decides otherwise." In practice, however, the Assembly has never held a private meeting, and the meeting of its committees since the second session, and largely due to the insistence of Lord Robert Cecil, have invariably been public.

tendency to break up into sub-committees (sometimes " mixed " sub-committees made up from two committees), whose meetings are private (that is, attended by members of the Secretariat, but not by the Press or public). Behind the sub-committees again are conferences of two or more delegations, and behind these conversations between individual members of different delegations, often with members of the Secretariat acting as go-betweens. Agreements reached by these different methods are binding in, roughly, the same proportion as their publicity—*i.e.* (1) private conversations between individual delegates over a cup of tea or more substantial fare are purely informal and preliminary, but may (2) pave the way for a secret conference between two delegations which will determine the attitude of their representatives at (3) a private sub-committee whose deliberations provide a basis for discussion at (4) the public full committee, whose conclusions are (5) almost invariably endorsed as a matter of course in the Assembly. Almost, but not quite, for occasionally a struggle in a committee " spills over " into the Assembly in the form of a protest or abstention from voting or reservation or interpretation on the resolution voted by the Assembly.

WAYS OF TAKING A DECISION [1]

The Assembly—in order to adapt its proceedings to the unanimity rule and to the fact that it is merely a link in the work of a number of committees and special conferences, as well as preceding and succeeding Assemblies—can take a decision in a number of ways. It may adopt a general resolution as a basis for further work, to be elaborated by the Council and passed on to the proper auxiliary organizations for eventual report to a future Assembly through the Council. It may approve a draft convention prepared in this way in previous years and pass it on to a special conference for adoption of the final text (subject to the usual processes of signature, ratification, etc.). It may frame a convention directly on the basis of reports and recommendations prepared by some auxiliary organization, and open it for signature by the governments concerned. Or there may be a vote recommending a draft convention or other text to governments for adoption or for " earnest consideration," or simply a " *voeu* " or recommendation.[2]

DELEGATIONS: THEIR COMPOSITION AND INSTRUCTIONS

What decision the Assembly takes depends upon the instructions

[1] See below, pp. 467-469.

[2] There is also the method of the " gentlemen's agreement," by which a minority yields to a majority. See below, p. 447, footnote.

of the delegates, which, again, depends chiefly upon the nature of the subject and the stage it has reached in League procedure. Fundamentally, the Assembly's decisions depend on the policies of the states in the League and on the extent to which their policy on League questions and in League bodies forms an integral part of their general home and foreign policy. A tendency which made itself felt particularly in the early years of the League was to regard proceedings at Geneva as outside and disconnected with the governments whose delegates were supposed—as was clearly laid down by the first Assembly—to act and vote in their name and on their instructions. The result was that instructions were often vague and inadequate and that governments were lax in carrying out the decisions they had endorsed through their representatives at Geneva. The standard of morality as regards international obligations contracted at Geneva was lower than that obtaining in other inter-governmental conferences, whereas it ought to be higher.

On the other hand, allowance must be made for the fact that League procedure, because it is continuous, is cumulative, and so can afford to be elastic. An *ad hoc* international conference must produce a final result and get it ratified by the governments concerned or it has accomplished nothing. In the League proposals can ripen gradually, passing through a series of conferences and committees before final government action becomes necessary. Therefore the Assembly need not either reject or accept a proposal outright, but can adopt any one of several " intermediate " attitudes and thereby carry some matter not ripe for final action a longer or shorter step further.

The Assembly is, consequently, a looser body than an ordinary conference of states—there is more room for the free play of opinion and discussion. This fact, combined with the comparatively large size of the delegations, means that the Assembly is a more democratic body than most inter-governmental conferences. An increasing number of the Assembly delegations, indeed, are composed of political leaders from all parties in their respective countries. The French delegation for some years has been a striking instance of this method, and the result has been to give French policy in the League a stability and definiteness that contrasts with the record of the British Government. For instance, the British Government apparently changed its mind completely at least twice on the subject of arbitration, security and disarmament during the first six years of the League. These changes had a most unfortunate effect on the development of the League's work, and were not due

to any great variation in fundamental British policy on the subject, but simply to one-sided representation of British opinion by successive governments.[1] It would seem that some sort of all-party representation on questions of foreign policy, particularly when dealt with through the League, must eventually be adopted by all countries who wish their foreign policy to be both democratic and continuous. The fact that the six Assembly committees each deal with a well-defined group of subjects, and that a delegate sitting on one committee need not therefore necessarily accept responsibility for the policy of his delegation on the subjects dealt with in the others, makes the difficulties involved less than they would be otherwise.[2] Assembly decisions should be taken in a way that makes them truly representative of the opinion of the countries concerned and should be accepted as a matter of course by the governments whose delegates voted in their favour.[3]

THE COUNCIL

The Covenant states that " the Council shall consist of representatives of the principal Allied and Associated Powers together with representatives of four other members of the League " which " shall be selected by the Assembly from time to time in its discretion. Until the appointment of the representatives of the four members of the League first selected by the Assembly, representatives of Belgium, Brazil, Greece and Spain shall be members of the Council."

Original Membership and Early Changes

(a) *Continental and Ethnic Regionalization*

The Council thus originally consisted of the four principal Allies (as the United States did not take their seat)—namely, France, Great Britain, Italy and Japan—together with three smaller Allies and one " tame " neutral (Spain), represented in the Council by her ambassador in Paris.

With the fall of Venizelos, Greece lost status in the international community and favour in the eyes of the principal Allied Powers. She was, consequently, dropped from the Council in September 1920, and China elected in her place. The latter election was commended on the ground that it brought in an Asiatic state and

[1] See discussion of this point in the chapters on " Peaceful Settlement of Disputes " and " Security and Disarmament " in Volume II., as well as that on " British Foreign Policy " in Volume III.

[2] See the discussion on " British Foreign Policy and the League " in Volume III.

[3] See below, pp. 466-469, for a discussion of the way the Assembly works, its relation to special conferences and to conventions, etc.

so gave effect to a principle enunciated by subsequent Assemblies in the following recommendation:

> "It is desirable that the Assembly, in electing the six non-permanent Members of the Council, should make its choice with due consideration for the main geographical divisions of the world, the great ethnical groups, the different religious traditions, the various types of civilization and the chief sources of wealth."

(b) *Rules of Procedure and Increase of Temporary Members*

The first year (1922) that this recommendation was in force, however, the Assembly failed to re-elect China, as the Government of that country no longer represented anything but the city of Pekin. The Second Assembly passed a resolution fixing the rules of procedure for the election of non-permanent members of the Council, by which the latter were to be elected for a period of three years, beginning on the first day of January following their election. One-third of the non-permanent members should be renewed each year and retiring members should not be eligible for re-election until the expiration of a period of three years. The number of temporary members was raised to six. Sweden and Uruguay were elected in 1921 to fill the two new seats, and Czechoslovakia in 1922 to the seat falling vacant by the non-election of China. The increase of temporary seats to six was due to the Spanish objection to introducing the system of rotation or any other measure making more difficult her indefinite tenure of office, to Allied (particularly French) unwillingness to drop any of their smaller clients from the Council, to the desire of part of the Assembly to see an "ex-neutral" on that body, and to the craving of the South Americans for more seats. In order to please everybody the Council recommended an increase of seats and the Assembly approved. Holland alone protested at this proceeding. The main argument advanced in favour of increasing the membership of the Council was that the increase in the membership and activities of the League made this desirable and that the increase of temporary members was a mere anticipation of the increase in permanent members that would follow from the eventual accession of Germany, Russia and the United States (thus making seven permanent members to six temporary, or restoring the original composition of the Council by which the smaller Powers were in a minority of one).

(c) *Amendment to Article IV.*

The new rules of procedure were supported at the Third Assembly by an amendment to Article IV. of the Covenant,

declaring that the " Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent members of the Council, and particularly such regulations with regard to their term of office and the conditions of re-eligibility." The amendment was voted because it was held by jurists that the original text of the Covenant, saying that temporary members should be " selected by the Assembly from time to time in its discretion," meant that no one meeting of the Assembly could limit the choice of any future meeting and that, consequently, temporary members ought to be elected afresh at each meeting and none of them could be declared ineligible for any meeting.

DEADLOCK

Spain, however, asserted that she had become a member of the League on an interpretation of Article IV. that would enable her to be re-elected indefinitely to the Council by a mere majority and so become what might be expressed as a " permanent temporary member." She used her position on the Council to block the proposed amendment to Article IV. In this attitude she was supported by France, as the latter found it convenient to have a " tame " neutral represented by its Paris ambassador as a member of the Council. Thus by 1926 the amendment had been ratified by thirty out of the fifty-five members of the League, including all the members of the Council except Spain and France.[1] From the third to the sixth Assemblies the same temporary members (Belgium, Brazil, Czechoslovakia, Spain, Sweden, Uruguay) were re-elected each year. The subject of rotation, on which rules were framed in the Second Assembly and the amendment to the Covenant just referred to voted by the Third, was again commented on by the Fourth Assembly, which urgently requested " members of the League, and especially the members of the Council, to ratify the amendment to Article IV. of the Covenant which was adopted by the Second Assembly," and expressed " the confident hope that this amendment will come into force before the meeting of the Fifth Assembly." The Fifth Assembly was so taken up with the famous " Protocol for the Pacific Settlement of International Disputes " that no reference was made to this subject and the six temporary members merely re-elected. The Sixth Assembly, however, voted the following resolution, Spain abstaining :

" The Assembly, noting that the non-permanent members of the Council at present in office have been re-elected for a year, considers the meaning of

[1] Amendments to come into force must be ratified by all the members of the Council and a majority of the Assembly.

this re-election to be that it is subject to the non-permanent part of the Council being renewed as from the election of 1926, by application of the principle of rotation."

The Locarno Side-Wind

Meanwhile a series of events had been taking place outside the League destined to have the most profound effects on this question; the system of inter-Allied dictatorship set up in some measure as an alternative to that of international co-operation through the League had culminated and morally broken down in the occupation of the Ruhr. From this point the tendency in France was to seek a *modus vivendi* with Germany. The first result of this new tendency was the temporary settlement of the reparations issue through the Dawes Plan.[1] If the Labour Government had remained in power in Great Britain it is probable that there would have been a settlement of the question of security within the framework of a general agreement linked up organically with disarmament and arbitration and based on the Covenant. Instead, the subsequent Conservative Government preferred to deal with the matter through the Locarno Agreements of November 1925, which may be looked upon as a local and partial application of the principles of the Covenant to a special problem—namely, the relations between France and Germany.[2]

As a corollary of this settlement Germany promised to apply for admission to the League, while the Locarno Powers undertook to support her claim to a permanent seat on the Council.

Confusion and Conflicting Claims

After this came notes from Germany to the members of the Council and the League at large, and a special meeting of the Council, which summoned an extraordinary session of the Assembly in March 1926 to admit Germany and decide upon the reorganization of the Council. These preparations were accompanied by a growing Press campaign and rumours of negotiations between some of the "Locarno Powers" in favour of Polish and Spanish claims to permanent seats on the Council. The former claim was backed by the French Government, the latter by Sir Austen Chamberlain. Brazil, and subsequently China and Persia, soon swelled the list of claimants.

[1] A summary of this plan is given in Volume II., as well as a discussion of the question of a possible revision of the reparations settlement.

[2] This should not be taken to imply the view that the Locarno treaties were inferior to the arrangements embodied in the abortive Geneva Protocol. They are in many quarters held to be superior owing to their greater feasibility and elasticity. For a discussion of this and cognate matters see the chapters on "Peaceful Settlement of Disputes" and "Security and Disarmament" in Volume II., and the chapter on "British Foreign Policy" in Volume III.

It was argued on behalf of the Poles that they were a state of thirty millions in the heart of Europe, and as such bound to be directly interested in practically every important European question: in particular they had so many unsettled issues with Germany that it was best to have both Powers on the Council to discuss these matters directly and on a footing of equality. The French Press at one moment declared that the presence of Poland on the Council would help to "neutralize" the presence of Germany and redress the balance of that body, but later inclined to the view that, after Locarno, France no longer wished to act as intermediary between Poland and Germany, but desired to encourage a direct understanding between them which could best be obtained if they were both on the Council and so bound to co-operate on questions not directly affecting either.

Spain thought she was entitled to a permanent seat because of her former position as a Great Power, the fact that she was the biggest state neutral in the world war, her detached position in Europe, and her cultural and moral leadership of the Latin American nations. She also claimed that all but one of the members of the Council had voted for her permanent membership at a secret meeting in 1920, and that the British Government had pledged itself afresh in December 1926 to support Spain.

Brazil said she was a country of thirty millions, and greater in area than the United States of America: so long as the latter were absent from the League she must have a permanent seat, for she was the next greatest American Power and it was unfair that there should be no permanent member from the American continent. China put forward her claim on the strength of her size and population and ancient civilization, while Persia fancied herself as the chief Mohammedan Power in the League.

The Poles never made any threats as to what would happen if their wish were not achieved, but on the contrary intimated that they were open to any reasonable compromise. The Spaniards were polite but firm, and said if their claim were not granted they would, while not opposing the admission of Germany, resign from the League. The Brazilians, on the other hand, said they would veto Germany's designation as a permanent member of the Council rather than yield. The Chinese and Persian claims were put forward with the understanding that they would be withdrawn if the other claims were disallowed and the principle upheld that Great Powers only should be permanent members of the Council.

Germany insisted that the Council she was invited to enter at

Locarno with the understanding of permanent membership was the Council as it had hitherto existed: she would not consent to changes being made just before her entry which would radically alter its nature in such a way as in her view to diminish the importance and political effectiveness of her position and emphasize the "Allied" element in that body. Rather than submit to this she would withdraw her application for admission: she was of course perfectly ready to discuss the reorganization of the Council after she became a member.

THE MARCH ASSEMBLY

This confusion of claims and counter-claims was dealt with at the time of the special Assembly in a series of private meetings and negotiations between the Locarno Powers and the claimants, and secret tea-parties of the members of the Council. The regular machinery of the League (*i.e.* Assembly, Council and Secretariat) and the method of publicity were not used. The claimants had to discuss the matter in meetings so large that news of what transpired trickled through to the Press, and friendly discussion and concessions were well-nigh impossible, but were not faced before their positions had irrevocably hardened with the necessity for publicly accepting the responsibility for an extreme attitude. In particular the Brazilians, who spoke throughout in the name of Latin America, were not threatened at the outset with disavowal by all the Latin American states present: this actually took place at the very end of the proceedings, on the initiative of the Latin Americans themselves, but it was then too late, as the Brazilian Government had already hopelessly committed itself at secret tea-parties where the threat of veto was made and promptly became known to the Press of the world.

At one point it looked as though the British and French foreign ministers rather than give up their claim to a permanent seat for Spain and the creation of an extra temporary seat (which in their minds should be filled by Poland—this was the final compromise they offered Germany) were prepared to move for the adjournment of the Assembly. This would have meant the withdrawal of Germany's application and the collapse of all that had been attempted at Locarno. This disaster was averted by the Swedes offering to give up their seat on the Council and vote for Poland in the ensuing election, an offer accepted by Germany after Czechoslovakia had further agreed to give up her seat and vote for Holland as a successor (thus restoring the "international" character of the Council).

The last-minute compromise thus reached failed, for Brazil reiterated her determination to veto any solution not giving her a permanent seat. Nevertheless, as a result of Sweden's sacrifice, relations between the Locarno Powers were not impaired, and Germany undertook not to withdraw her application, while the whole matter was adjourned to September.

THE COMMITTEE ON THE REORGANIZATION OF THE COUNCIL

In addition to saving the Locarno policy out of the wreck, the extraordinary Assembly decided on the appointment of a committee by the Council to consider the reorganization of the Council. The members of the Council—that is, France, Great Britain, Italy, Japan, Belgium, Brazil, Czechoslovakia, Spain, Sweden and Uruguay—were on this committee. Germany being considered "morally" a member of the Council was also put on, as were the Argentine, Poland and China. Thus all the interested parties were on the Committee, as well as a number of states who had no direct interest, and notably two South American countries that could be trusted to show the hollowness of Brazil's claim to represent that continent.

The Committee met in May, and its proceedings were from the first strongly influenced by the presence of Lord Robert Cecil, the British delegate, who brought all his admirable gifts as a statesman and negotiator and his profound knowledge of the spirit and methods of the League to the solution of the crisis. It was decided at the outset, at Lord Cecil's instigation, that the meetings of the Committee should be held in public.

At its first session in May the Committee produced a scheme based on Lord Cecil's draft, and opposed only by the Brazilians and Spaniards, providing for the increase of temporary members from six to nine, and their election for a period of three years, three retiring each year. By a two-thirds vote the Assembly could declare a retiring member re-eligible, but failing such a vote a state ending its term of office could not stand for re-election before a period of three years off the Council. The declaration of re-eligibility could be given either at the time a state was elected or during its term of office, or at any time in the three years of non-eligibility succeeding its term of office. Only three out of the nine temporary members could be thus re-elected. A new state should take office immediately on election—that is, in September—instead of waiting until the 1st of January, as had previously been the practice.

The next session of the Committee was fixed for June 28, on

the assumption that in the interval the Brazilian and Spanish governments would be persuaded to accept the scheme, which was intended to make them permanent members, in fact if not in name, for as long as they could secure a two-thirds majority in the Assembly.

Instead, however, the Brazilian representative announced at the June session of the Council that his government gave notice of withdrawal from the League, while the Spaniards maintained their attitude of courteous and dignified intransigence. The Council therefore postponed indefinitely the second session of the Committee, which was not summoned until just before the Assembly, and then at the instance of the Spanish representative.

At this session the Committee at last took the bull by the horns and made its recommendation that Germany alone should be designated as a permanent member of the Council. It reaffirmed its recommendations with regard to temporary members, and took note of the important fact, announced by the French Government at the June meeting of the Council, that France was ratifying the amendment to Article IV. of the Covenant that empowered the Assembly to fix the rules governing the election of temporary members of the Council by a two-thirds majority. Finally the Committee adopted the Uruguayan proposal that of the nine elected members three should in principle be reserved for the Latin American countries. The Chinese delegate argued vigorously for a similar recommendation with regard to countries from continents other than Europe and America, and finally secured a recommendation stating that " adequate representation should be given to Asia. The Chinese delegate strongly urged that at least two seats should be allotted to Asia and the other parts of the world outside Europe and America."

Breaking the Deadlock

The Council transmitted this report to the Seventh Assembly, recommending in one resolution the designation of Germany as a permanent member, the increase of the temporary members to nine and the rules for their election devised by the Committee.

The adoption of the resolution by the Assembly coincided with Germany's becoming a member of the League and the Council, and with Spain's two years' notice of withdrawal from the League. At the same time the Spanish Government announced that it would now ratify the amendment to Article IV. of the Covenant, thus making possible the adoption of the new rules by the Assembly.

The First Committee, to which the resolution was referred, debated it at great length, and finally adopted a text which contained only one important modification to that proposed by the Committee on the Reorganization of the Council. This modification declared that the Assembly might at any time proceed by a two-thirds majority to a new election of all the non-permanent members of the Council, and should in such cases determine the rules applicable to the new election.[1]

[1] This is the text of the regulations framed by the First Committee of the Assembly and adopted by the Seventh Assembly on September 15, 1926:

Article I

The Assembly shall each year, in the course of its ordinary session, elect three non-permanent Members of the Council. They shall be elected for a term commencing immediately on their election and ending on the day of the elections held three years later by the Assembly.

Should a non-permanent Member cease to belong to the Council before its term of office expires, its seat shall be filled by a by-election held separately at the session following the occurrence of the vacancy. The term of office of the Member so elected shall end at the date at which the term of office of the Member whose place it takes would have expired.

Article II

A retiring Member may not be re-elected during the period between the expiration of its term of office and the third election in ordinary session held thereafter unless the Assembly, either on the expiration of the Member's term of office or in the course of the said period of three years, shall, by a majority of two-thirds of the votes cast, previously have decided that such Member is re-eligible.

The Assembly shall pronounce separately, by secret ballot, upon each request for re-eligibility. The number of votes cast shall be determined by the total number of voting tickets deposited, deducting blank or spoilt votes.

The Assembly may not decide upon the re-eligibility of a Member except upon a request in writing made by the Member itself. The request must be handed to the President of the Assembly not later than the day before the date fixed for the election; it shall be submitted to the Assembly, which shall pronounce upon it without referring it to a Committee and without debate.

The number of Members re-elected in consequence of having been previously declared re-eligible shall be restricted so as to prevent the Council from containing at the same time more than three Members thus elected. If the result of the ballot infringes this restriction to three Members, those of the Members affected which have received the smallest number of votes shall not be considered to have been elected.

Article III

Notwithstanding the above provisions, the Assembly may at any time by a two-thirds majority decide to proceed, in application of Article IV. of the Covenant, to a new election of all the non-permanent Members of the Council. In this case the Assembly shall determine the rules applicable to the new election.

Article IV.—Temporary Provisions

1. In 1926, the nine non-permanent Members of the Council shall be elected by the Assembly, three for a term of three years, three for a term of two years, and three for a term of one year. The procedure of the election shall be determined by the General Committee of the Assembly.

2. Of the nine Members thus elected in 1926, a maximum of three may be immediately declared re-eligible by a decision of the Assembly taken by a special vote by secret ballot, a separate ballot being held for each Member, and adopted by a majority of two-thirds of the number of votes cast.

This modification went far to placate the small Powers, who felt resentful of the way in which the Council had imposed its views in this matter. In fact it made small difference to the situation, since according to the amended Covenant the Assembly can, in any case, by a two-thirds majority fix the rules dealing with the election of the non-permanent members of the Council, and particularly such regulations with regard to their term of office and the conditions of re-eligibility, or, in other words, could alter or abolish the whole of the rules of procedure governing this matter and cancel any decision of any previous Assembly.

But the whole discussion on the subject was marked by interminable debates on questions that had no importance when regarded objectively, but had become the symbol of the feelings of the contending parties. Thus, whereas it was pretty plain that in the original proposal a declaration of re-eligibility was considered synonymous with re-election, and that consequently only three out of the nine temporary members could at any time be declared re-eligible, the German representative at an early stage established a distinction between the two whereby it might be possible for the Assembly to declare any number of temporary members re-eligible although only three could be re-elected. The effect of this, of course, would be to make a declaration of re-eligibility of no value, and this was precisely what the Germans wanted, since they were anxious to put the Poles, who were claiming re-eligibility, in as unfavourable a situation as possible. The Poles, on the other hand, wished a declaration of re-eligibility to be practically the same as a guarantee of re-election, and consequently contended throughout that only three of the nine temporary members could be declared re-eligible. This struggle was rather unreal, because a declaration of re-eligibility requires a two-thirds vote, which is a number of votes sufficient to effect any change desired in the rules of procedure, including a revision of the qualifications for re-election.

Immediately after the announcement of the results of the election, the Assembly shall decide upon the requests for re-eligibility which have been presented.

Should the Assembly have before it more than three requests for re-eligibility, the three candidates having received the largest number of votes in excess of two-thirds of the votes cast shall alone be declared re-eligible.

3. The according in advance in 1926 to one, two or three Members elected at that date of the quality of re-eligibility shall not affect the Assembly's right to exercise in the years 1927 and 1928 the power given by Article II. in favour of other non-permanent Members retiring from the Council in those years. It is, however, understood that, if three Members already possess the quality of re-eligibility, the Assembly will exercise this power only in very exceptional cases.

THE ELECTIONS TO THE NEW COUNCIL

After the adoption of the report and resolution of its First Committee the Seventh Assembly proceeded to the election of the new Council, and in so doing gave Poland a three-year seat and a declaration of re-eligibility by a well-nigh unanimous vote, elected Chile and Roumania for three years, China, Colombia and Holland for two years, and Belgium, Czechoslovakia and San Salvador for one year.

The big vote for Poland was generally regarded as being partly a tribute to the conciliatory behaviour of that country from the beginning of the crisis and partly a recognition of the extent to which her claim for membership on the ground of her international importance and position was justified.

Roumania was elected as the candidate of the Little Entente, whose claim to be represented permanently on the Council by one of its members in rotation has not so far been challenged. Chile was elected for three years because that country was the most important South American state still an active member of the League, and also, it is to be feared, because of hints from the Chilean representative that they would imitate the example of Brazil if they did not get what they wanted.

The Chinese, too, threatened to leave the League unless they could get a seat on the Council, and in a choice between two evils —namely, of having a Chinese representative on the Council who did not represent a government with any authority in China, or having that government create an exceedingly difficult situation for the future by giving notice of withdrawal—the Assembly chose what seemed to it the lesser. Holland was the strongest candidate among the " ex-neutrals " and the obvious successor to Sweden, who, having voluntarily sacrificed her seat to get over the Council crisis, refused to stand again for election, although repeatedly urged to do so. Colombia's two-year seat was given her in virtue of the understanding that the Latin Americans should have three seats, and because of the feeling among the Latin Americans themselves that their three seats should be given, one to the ABC Powers (Argentina, Brazil, Chile), one to the smaller South American states and one to the minute Central American republics. How far any such division would prove practicable were Argentina and Brazil to return to active membership, Bolivia and Peru return to the Assembly and Mexico to enter the League it is difficult to say. At any rate the first application of the idea involved a struggle between the rival claims of Uruguay and

Colombia and a somewhat surprising split in the South American *bloc*, as well as a denial of the right of such a *bloc* to exist and a warm declaration in favour of League universality as compared with continental groupings by M. Guani, the Uruguayan delegate.

San Salvador was elected for one year, on the theory just described, as the representative of the Central Americans. She was succeeded at the Eighth Assembly by Cuba, whose astute representative, M. Aguero y Bethancourt, known as the " Great Elector," in view of his activities in the lobbies in rounding up the South American vote, publicly and with great nobility refrained from standing as a rival candidate for this seat in 1927, on the calculation—which subsequently proved correct—that he would get it for three years in 1928. Belgium and Czechoslovakia were elected for one year on their merits as members of the Council, which are high, out of a desire to preserve some continuity among the temporary members and not make the transition too violent, and because of the exceeding difficulty after the withdrawal of Brazil and Spain of finding any reasonably qualified candidates who would be willing to take a one-year seat instead of waiting a year in order to be elected for three.

The Eighth Assembly elected Canada, Cuba and Finland instead of the retiring one-year members. The reasons for Cuba's membership, such as they are, have already been indicated. Finland was elected on her merits as a state and because of her position as a country intermediate between the Scandinavian and Baltic States and having close affinities with both groups. Canada's election marks a further development of the independent status of the Dominions and the recognition of this status by the rest of the world.[1] Belgium failed to secure the two-thirds majority necessary to make her re-eligible, thus showing that the Assembly intends to use this power sparingly and demonstrating its independence of the big Powers, who were in favour of Belgium's candidature.

The Aftermath

Thus Germany finally became a member of the League in circumstances that emphasized the decisive importance of this event and left their mark for good and bad on its whole status and development. A great many morals have been drawn from or read into the confused and unedifying struggle that accompanied

[1] The political significance of the election of Canada to the Council is discussed in the chapter on " The International Position of the British Empire " in Volume III., while the question of Latin Americans on the Council is touched upon in " America and the League," and Poland's semi-permanent membership is discussed in the chapter on " Poland," also in Volume III.

Germany's entry. Those that appear worth notice will be discussed in subsequent chapters. At this point only a few of the more obvious reflections are relevant.

In the first place, the crisis meant in part a readjustment of the League to outside realities. From the beginning the League had lived in a more or less artificial atmosphere, both because the most important governments were represented in it by elder statesmen who, while their conceptions of international morality were no doubt higher than current standards, did not, perhaps for that reason, occupy positions of the first importance in their respective governments, and because the most important international relations in the first years after the war—namely, those between Germany and the former Allies—were conducted outside the League. Consequently Germany's slow recovery of a position of authority befitting her size and cultural and economic importance was not reflected within the League, while some of the smaller states in that body gradually began to feel as though the position conferred upon them at the Peace Conference belonged to them by right and for ever. Notably Brazil and Spain came to think of membership of the Council as a perquisite of their respective states, while it was difficult for the Poles to realize that Germany was not in the League and yet had attained an international position that entitled her to permanent membership of the Council on a level with France and Great Britain and before Poland. The shock of that realization was not softened by the fact that it was brought home to the smaller members of the League by the foreign ministers of the Great Powers, who knew little or nothing about League procedure and tended to view the whole question as one concerning the Great Powers and to be imposed by them on the rest of the League. The one remark of the Brazilian representative which was really popular in the extraordinary session of the Assembly was a declaration that Locarno should be adapted to the League and not the League annexed to Locarno. From this point of view the crisis may be looked on as a healthy sign, as growing pains of the League, which had to adjust itself to the addition of an important new member, to the inclusion thereby of a set of great international problems and important international relations within its system, and to the closer contact with realities implied by the attendance at its proceedings of the foreign ministers of even its greatest members.

On the other hand it is equally legitimate to conclude that if existing realities, by which are meant the current standard of

international morality and the methods and outlook of responsible statesmen and diplomatic services, remain too low and too much imbued with pre-war shortcomings, the League has not much chance of functioning successfully—let alone attaining its full growth and fulfilling the hopes of its founders. The Council crisis, it may be urged on this view, was due largely to attempts to run the policy of Locarno and that of anti-German military alliances in double harness, and to conduct both by means of personal bargains and hand-to-mouth improvisations between the Locarno Powers, taking no account of the rights of other states under the Covenant nor of the League methods of careful, all-round technical preparation and methodical public discussion. The application of pre-war minds to post-war realities may, if too long persisted in, cripple the League by introducing into its midst the suspicions and rivalries that broke Europe up into hostile alliances before the war.

The third point is that the League has been in some ways weakened by the proceedings of the extraordinary Assembly and the way in which the Council was reorganized. Strong arguments can be adduced for the present composition and rules of election of the Council: the membership of the League and the number and importance of its tasks have grown so greatly since its inception that a Council of fourteen members may be said to have done no more than to keep pace with this growth. The institution of rotation and a three-year period of office, together with the continuity provided by the fact that only three members are elected each year, represent a long-standing wish of the Assembly for combining, so far as possible, the necessity for letting a state sit on the Council long enough to become a really useful member with giving all states qualified for such membership a chance in due course. The right of the Assembly to proceed to a general election of all the members and to suspend the rotation rule by declaring a limited number of the elected members re-eligible by a two-thirds majority prevents the system from being so rigid that it cannot be modified at the desire of a large majority of the States Members of the Assembly. The idea that certain states which cannot qualify for the rank of Great Powers are yet of sufficient importance to constitute a special category goes back to the very beginning of the League, when General Smuts, and after him President Wilson, it will be remembered, suggested that the temporary members should be elected by two panels of states—one composed of the " middle-sized " Powers, the other by the small

Powers.[1] Poland, well-nigh unanimously given a re-eligible seat, has strong claims to the position, as has been indicated already, and will be discussed in greater detail in the chapter on "Poland" in Volume III. This also applies to Spain.

Nevertheless the taint of its origin clings to the new Council, and is responsible for the feeling that on it the Great Powers tend to form an inner ring, settling everything between them and treating the nine smaller members rather as an audience than as collaborators. The withdrawal of Spain and Brazil meant the temporary loss of two important members and struck a grave blow at the prestige of the League by launching the idea that the paragraph in Article I. of the Covenant allowing states to withdraw on two years' notice is not a dead letter but a perfectly feasible policy. As the cases of Chile and China already quoted have shown, the idea of using the threat of withdrawal to extort concessions has achieved a certain limited popularity, and it will be some time before the League has regained sufficient strength to make the danger of further withdrawals academic. In the absence of Brazil, not to mention the abstention of other South American states, the Council is rather too numerous to be filled comfortably and the elections at both the Seventh and Eighth Assemblies involved a certain amount of "padding." The Council, by trying to combine its functions as the responsible executive of the League with some of the representative attributes of the Assembly, has to some extent fallen between two stools, and gives the impression of not being certain of its rôle. But life and growth and work have a way of overcoming and even drawing strength from what appear at the time to be weaknesses, and the League is still too young to be able to say with certainty that any particular change is definitely bad.

THE CRISIS NOT SOLVED

(a) *Status of Permanent Members*

In fact, all that can with confidence be stated at present about the new Council is that neither its methods of election nor composition have as yet been settled. That is why it has seemed desirable to state in some detail just what its evolution has been since the beginning and the forces at work, for a careful study of the past is indispensable to understanding the future. As regards methods of election, the discussions on the reorganization of the Council brought out the extent to which the permanent membership of the Great Powers on the Council was regarded by other

[1] See above, pp. 81, 82.

states as an unsatisfactory and temporary compromise. The idea that all the members of the Council should be elected by the Assembly, strongly pressed by the Argentine delegate on the Committee for Reorganizing the Council, has frequently been put forward as the simplest and most democratic method. It may be simple, but it is emphatically not democratic. Why should forty-two million Englishmen or sixty million Germans have the same vote as a few hundred thousand Cubans or Abyssinians? The theory of one vote for every state is, of course, based not on democracy but on the theory that states are sovereign entities, which in some mystic way are "equal." It is fairly generally recognized that states, whether great or small, strong or weak, should be equal before the law, but surely the idea that they should have equal voting power is no more tenable theoretically than it would be feasible in practice. The League has solved this eternal problem of inter-state organization by the setting up of the Assembly and Council and the permanent membership of the Great Powers in the latter. If the Assembly were to elect all the members of the Council the compromise would have to be reintroduced in a different form—namely, by differential voting in the Assembly. This, again, would introduce fresh difficulties, because the Assembly and Council represent governments, not individuals, and in any case is not a proposal at all attractive to the smaller Powers.

A somewhat less simple suggestion is that a new criterion should be found for membership of the Council, to avoid the invidious distinction between Great Powers and small, by stating that any Power fulfilling certain objective conditions would automatically become a permanent member, while any Power ceasing to fulfil them would, *ipso facto*, lose its permanent membership. The fact that it was first proposed at the Peace Conference that the Great Powers should be permanent members of the Governing Board of the International Labour Organization, and that for this was substituted a system of criteria by which the eight states of "chief industrial importance" were chosen for permanent membership of this body, is referred to in this connexion.[1] This suggestion overlooks the fact that whereas it is possible up to a point (though only up to a point) to devise "objective" criteria for determining what constitutes industrial importance, there are no such criteria for determining political importance, and it is for their political importance that states become permanent members of the League

[1] See Chapter VIII., on "The International Labour Organization" (pp.253-254), for a discussion of this form of criterion.

Council. Such political importance cannot be tested merely by the population of states (this would make China the first country of the world), nor by their budgets or share in world trade or any other " objective " standard. It is in the last analysis a matter of the general consensus of opinion, and this consensus has already indicated certain states, which have been given the name of " Great Powers," as possessing the requisite political importance. Formerly a country became a Great Power by virtue of its fighting capacity, which was the only criterion of its civilization that the West really respected. It is an interesting fact that Germany, in becoming a permanent member of the League Council in spite of her disarmed condition, has revolutionized pre-war conceptions of what constitute a Great Power and shown that, thanks to the existence of the League, and judged by its standards and criteria, a state can become a Great Power through cultural and economic importance alone. But nevertheless the fact remains that any system of criteria would in the last analysis be a mere periphrasis or circumlocution for describing a Great Power—such as the phrase " Powers of unlimited interest " put forward at the Peace Conference.

(b) *Methods of electing Temporary Members*

A less drastic proposal—namely, for changing the method of electing members of the Council—was put forward by the Norwegian delegation at the Seventh Assembly and given an unostentatious funeral by the First Committee of the Eighth. This proposal left the question of permanent members severely alone, but proposed that the temporary members should be elected, not as at present by ordinary majority voting with re-balloting on the candidates appearing in the first vote but not securing an absolute majority of all the votes cast, until the requisite number is elected, but by the so-called " single transferable vote." The Norwegians argued that on the present system it is theoretically possible for a majority of states in the Assembly to elect all three candidates and leave the minority quite unrepresented. This is particularly unfortunate in that the object of the Council election is to secure as representative and well-balanced a group of states as possible. By the system of the single transferable vote, on the other hand, one-third of the members of the Assembly by giving their first preference to the same candidate could ensure his election (since there are only three seats to be filled—if there were four seats, one-quarter of the Assembly could fill a seat and if all the nine were re-elected one-ninth of the Assembly could do so).

This is of course perfectly true in theory, but it may be remarked that one-third of the Assembly means about fifteen states, and that in fact, under the existing system, if as large a body as fifteen states are determined to elect a particular state they can always do so by bargains with other groups which have other candidates. In the Norwegian view it is immoral that there should be this process of bargaining between groups, but it is difficult to see just why this should be the case, or how it could be avoided in securing pledges from one-third of the Assembly to cast a first preference vote for some state. At any rate, the Eighth Assembly showed pretty plainly that, rightly or wrongly, the suggestion of introducing the system of the single transferable vote is not even taken seriously, let alone desired, by the members of the League.

(c) *Composition of the Council*

But the questions of methods of election and status of permanent members are trifling compared with the problems raised by the future composition of the Council. The entry into or association with the League of the United States and Russia, for instance, and the remoter possibility of a China that had become united and so was one of the greatest Powers of the world, with an obvious claim to a permanent seat, would make the Council a fair-sized conference of seventeen states—much too big and unwieldy for executive work. And the longer the so-called semi-permanent members are re-elected the more clear it will become that the conferring on them of this status has merely postponed but not solved their claim to permanent membership. The situation will, in fact, reduce itself to their permanent claim on a two-thirds vote of the Assembly on pain of leaving the League. Turkey will in all probability put forward a claim to a semi-permanent seat soon after entering the League, and the return of Brazil would raise the numbers of the Council to twenty. Even the temporary members have some problems of their own—for instance, whether the Little Entente, composed as it is of only three states, should always be entitled to have one of its members on the Council, and if the Dominions are to consider after the election of Canada that one of them has always the right to be on the Council. If so, is India to take her turn, in spite of the fact that she is not a fully self-governing state, and what is to be the attitude of other countries in view of certain anomalies in Dominion status, in particular the doctrine put forward at the 1926 Imperial Conference that the terms of the Covenant do not apply to the mutual

relations of the different parts of the British Empire? [1] Here, too, of course, the fact that the League is growing and changing rapidly must be taken into account. Many of the problems mentioned may cancel each other out or be swallowed up in the evolution of the League. Perhaps the system of council committees for special purposes (*e.g.* Austrian, Mosul, Minorities committees), composed of both members and non-members of the Council, could be developed into Continental Standing Committees, and Article IV., Par. 5, of the Covenant be applied more fully and frequently, in order to combine elasticity with effectiveness and reconcile both with the desire for representation.[2]

FUNCTIONS OF THE COUNCIL

The Council has a double function to perform—it acts as a supervisory and executive organ on the basis of the Assembly's resolutions or in virtue of special clauses of the Covenant (Mandates) or peace treaties (Saar, Danzig, Minorities), and is a body for mediation or conciliation in disputes by means of inquiry and report on the basis of Articles XI., XV. and XVII. of the Covenant.

In general, the rôle of the Council as regards international co-operation is simply to keep in touch with the work of the subsidiary organizations and see that they keep on the lines laid down by the Assembly within the framework of the Covenant. In settling disputes the Council tends more and more to become a body not for threshing out the terms of a solution, but for focusing the political authority of the League on the disturbers of the peace in order to get them to accept a compromise based on the findings of the Court or a Committee of Inquiry or both, in the light of their treaty obligations and under the pressure of public opinion.

THE COUNCIL AND REGIONAL GROUPINGS

When the League was founded the public opinion supporting it, particularly in Anglo-Saxon and ex-neutral countries, was inclined to believe that the League must supersede and be incompatible with any form of partial alliance or union. No one was more insistent on this view than President Wilson. Yet he struck the first and heaviest blow at this conception by inserting Article XXI. of the Covenant, which was intended to protect the Monroe Doctrine and, as was foreseen by the Chinese delegate on the League of Nations Commission of the Peace Conference,[3] has since proved the constitutional basis for regional groupings and

[1] See the chapter on "The International Position of the British Empire" in Volume III. [2] See Volume II. [3] See above, p. 96.

alliances of every kind. And the very elements of public opinion in Great Britain and ex-neutral countries, which condemned all partial alliances most strongly, coupled with their view a disinclination to give reality to the " sanctions " clauses (Articles X. and XVI.) of the Covenant that furnished the strongest additional incentive to the states already committed to the " regional " view (*i.e.* France, the Little Entente, Poland, the Balkans, the Baltic States, Finland).

Indeed the attempt to rule out regional agreements in international relations may not unfairly be described as a political equivalent to the Sherman anti-trust law directed against economic combines within the United States of America. Both have proved equally futile, and for much the same reasons. The trend towards combination in the modern world is irresistible. So far from opposing it, the proper function of the League, both in the economic field—as was pointed out by the Economic Conference of 1927—and in politics, is to guide and encourage such developments along channels that will minimize their capacity to harm and develop to the utmost their power for good.

Nevertheless there are certain dangers that must be guarded against. For instance, suppose states A and B are bound by an alliance and B appears before the Council of which A is a member in a dispute with a third state, C. The Council by the terms of the Covenant must be unanimous (excluding the parties to the dispute) and so cannot come to a decision without the concurrence of A. Its decision will then be unfair as between A's friend B and B's opponent C. This is putting the case in the sharpest and most abstract form. In the first place, C is just as likely to have a friend on the Council as B, and the two would cancel each other out. In any case, the majority of states on the Council are likely to be chiefly interested in getting a stable solution of the conflict, and a state that had an axe to grind would find it politically difficult to become too stubborn and resist the pressure of its colleagues, with the threat in the background of being shown up before the public opinion of its own and other countries. This consideration is reinforced by the Council's habit of appointing a *rapporteur*, or a small committee, on the question before it, among its " disinterested " members, and by the system of fact-finding expert commissions and resort to the Court on points of law. In the third place, the Council's decision when taken is merely a unanimous public recommendation to the parties. Neither party need accept the recommendation, although

whichever does so is protected by the League in case of attack by the other. Throughout the proceedings of the Council, and whether it succeeds in reaching unanimity or not, the main factor relied on is the power of world public opinion. If a recommendation of the Council were obviously unfair, public opinion could be relied on to acquit a state that refused to accept it, provided it kept the peace.

But these considerations, while softening the implications of the alliance system within the League, do not remove the danger altogether. One way of doing so would be to declare only certain forms of regional agreement compatible with the Covenant, which overrides all other international obligations in the sense that members of the League cannot contract any treaty incompatible with the Covenant and must abrogate any such treaties concluded before they become members of the League.[1]

In addition an idea contained in Article 4 of the defunct Draft Treaty of Mutual Assistance might be revived and given a more extensive application. This article declared that when the Council is determining what state is the aggressor under Article XVI. of the Covenant, not only the belligerents shall be regarded as interested parties in a vote on the Council : " the same shall apply to states signatory to any partial agreements involved on behalf of either of the two belligerents unless the remaining members of the Council shall decide otherwise." Some such rule might be made to apply to the proceedings of the Council under Article XV. of the Covenant as well, and would be a power in the hands of the Council that would promote moderation among members with an axe to grind.

THE PERMANENT COURT

This review of the Assembly and Council requires rounding off by a glance at their relation to the rest of the system for conciliation and co-operation brought into existence by the League, although the parts of this system will be considered in detail in the appropriate chapters.

Whereas the Council and, in case of need, the Assembly are intended by the Covenant to deal with non-justiciable disputes,[2] Article XIV. of that instrument provides for the setting up of a

[1] See the discussion on " League Regional Understandings *v.* Separate Alliances " in *The League, the Protocol and the Empire*, by Roth Williams, as well as the discussion on peaceful settlement of disputes and security and disarmament in Volume II. of this book.

[2] See below, pp. 470-476.

Permanent Court of International Justice to serve the community of nations on justiciable issues. The Court is the culmination of the development of international law during the nineteenth century, which was revealed by the growth of arbitration, the two Hague Conferences and the establishment of the panel of arbiters known as The Hague Court of Arbitration.[1] Although therefore part of the same great movement from anarchy toward world polity, it represents a separate and somewhat isolated current, and is therefore dealt with in a separate chapter.

THE SECRETARIAT-GENERAL

According to Article II. of the Covenant "the action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council with a permanent Secretariat." The nature and functions of the Secretariat, which together with the Assembly and Council is the basis of the League's organization, are described in the next chapter. The idea of an international secretariat was due largely to the experience gained in recent years, particularly during the war, in international administration. The Secretariat prepares the agenda of League meetings and acts as a link between the governments members of the League and the various parts of the League's machinery.

THE AUXILIARY ORGANIZATIONS

Origin

This machinery is complex because the League is not merely an agency for handling disputes but also, and primarily, a medium for organizing international co-operation. It has already been shown how co-operation had been growing throughout the last half of the nineteenth century, and how the need for corresponding machinery had been increasingly felt, and had already before the war led to the formation of a number of so-called public international unions.

The difficulty with which these bodies had to contend was the absence of any organic connexion between them and the governments responsible for setting them up. The summoning, preparing and holding of conferences was a long and difficult business, so that once the original conference establishing some organization had been held the latter had to struggle along as best it could, with only the vaguest idea of when a second conference would

[1] See below, pp. 289-293, 365-366, 412-419.

meet. In the meantime it was reduced to communicating by correspondence and separately with the governments concerned, often through the Foreign Office of the country in which it was domiciled. In these circumstances some bodies nevertheless flourished, because they corresponded to an urgent and growing need—the Universal Postal Union at Berne is the best instance —while others dwindled to mere agencies for collecting and distributing information or came to be looked upon as an appendage of the government of the country where they were installed. On the whole the number and importance of these unions tended to grow before the war, and they even formed a loose association (The Union of International Associations), with headquarters at Brussels. Nevertheless it was felt at the Peace Conference that here too a fresh start was necessary, along lines that would co-ordinate the work of technical and humanitarian co-operation in all fields of international life, by connecting it directly with a system of regular government conferences and the driving force of public opinion.

CONSTITUTION

Accordingly, Articles XXIII. and XXIV. of the Covenant were drafted,[1] pledging member states to co-operate in a number of technical and humanitarian subjects, and providing that

> " there shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League."

To aid them in carrying out the stipulations of the Covenant, and certain other parts of the peace treaties, the Assembly and Council, or in some cases the Council alone or even a special conference, have set up a whole network of auxiliary organizations (advisory, technical, administrative), ranging from the complete autonomy and majestic proportions of the International Labour Organization, with its special chapter in the peace treaties and independent origin at the Washington Conference of 1920, to the (theoretically) complete dependence of an advisory committee. The Assembly votes the budget for all these organizations and, with the exception of the Labour Organization, passes in review and lays down the general lines of their work, which is supervised by the Council (again with the exception of the International

[1] Article XXV. might also be mentioned in this connexion, but its stipulations have in practice been included in paragraph (*f*) of Article XXIII. The text of these articles will be found in Annex A.

Labour Organization, which has its own governing board and General Conference). These bodies are more or less closely associated with—in some cases have absorbed—the public international unions or other international organizations working in their particular field, and clearly originate in a further development of this particular tendency in international life. An exception must be made for the Mandates Committee, the Saar Governing Commission, the Danzig High Commissioner and so-called " minorities procedure," which are all due to special Peace Treaty compromises necessitating international control or supervision. The setting up of these organizations, except the International Labour Organization, is part of the League's record and bound up with their several activities. They are therefore described in Volume II., devoted to *The League in Action*, each in the chapter dealing with the work of the organization concerned. The International Labour Organization, which can be classed with the technical organizations only by stretching the term—although it fits in nowhere else—is, however, described in Chapter VIII., while its record and present position are given a special chapter in Volume II.

CHAPTER VII

THE SECRETARIAT-GENERAL AND THE SEAT OF THE LEAGUE

THE idea of some permanent central body to carry out the decisions of international conferences had been successfully applied before the war in the constitution of the so-called " public international unions," and the war forced the belligerents to resort to international administration on an unparelleled scale.[1] There was, therefore, no difference of opinion at the Peace Conference—or in any of the private or official proposals submitted to the Conference —as regards the setting up of what was ultimately called the Secretariat-General[2] of the League of Nations. Nor was there any difficulty over the question of official languages; English was recognized as a diplomatic language ranking with French at the Peace Conference, and English and French became the official languages of the League.

THE SEAT OF THE LEAGUE

THE CHOICE OF GENEVA

The first difference of opinion that arose concerned the seat of the League. The Hague seemed unsuitable, because after the war men felt bitter and sceptical about The Hague Peace Conferences and Arbitral Tribunal, and wanted a fresh start. Brussels was favoured by many states, owing to its geographical propinquity to London and Paris, and because of the symbolic position occupied by Belgium in the Allies' view of the war. These, however, were the reasons why Brussels was opposed by other countries, particularly the United States. President Wilson's choice of Geneva finally prevailed: Geneva was the seat of the International Red Cross during the war and had long traditions as a free republic, prominent in the history of European thought and religious

[1] See above, p. 69.

[2] It was proposed at one time to call the Secretary-General " the Chancellor," which would presumably have involved calling the Secretariat " the Chancery." The intention was to make M. Venizelos the first Chancellor, and give him the power to summon meetings of the Council on his own initiative. When Venizelos refused, and it was decided to put a civil servant instead of what was at the time considered a great statesman at the head of the Secretariat, the name was changed, and Articles XI. and XV. slightly altered so as to make it clear that the Council could be summoned only on the initiative of some government member of the League.

evolution. Moreover, Switzerland as a country whose neutrality was guaranteed by treaties and situated in the heart of Europe seemed appropriate as the seat of the League.

INTERNATIONAL ATMOSPHERE

On the whole the choice has been a wise one and justified by experience. Geneva is so small and so cosmopolitan, and its society so purely local in appeal, that there has never been a "national" atmosphere strong enough to exercise any influence on League officials or delegates. It is a well-known fact that members of diplomatic or consular corps long resident in a country tend to adopt the view of the society with which they mingle. This although they are the representatives of their governments, charged with defending their interests and in constant touch with their foreign offices. What would have been the effect on a body of international officials, with no traditions to guide them and no government to which they were responsible and from which they took instructions, of permanent residence in, *e.g.*, London or Paris? As it was, the Secretariat, during the early years of its existence, often was accused of being dominated by the British or French (the accusation varied according to the nationality of the person making it). The position would have been quite impossible had it been settled in some city of great political importance.

Instead of national atmosphere warping the development of the Secretariat the establishment of the League at Geneva bids fair to imbue that town with an international atmosphere [1] all its own. Thirty-five international societies and organizations have made their headquarters at Geneva. Innumerable meetings and conferences are held in Geneva throughout the year: those of the League, those of various private organizations, and even, as in the case of the ill-starred Three-Power Naval Conference in 1927, government meetings outside the League. A number of governments have their accredited representatives stationed at Geneva to keep in touch with the League. Thousands of visitors come to Geneva every year in order to "see the League," to follow some of its meetings, or to attend one of the numerous international institutes or summer schools that have sprung up like mushrooms. A school of higher international studies has been organized as an autonomous branch of Geneva University, with an international staff and financed chiefly by the Rockefeller Foundation. Its aim is to become something equivalent in the modern teaching of

[1] See below, pp. 451-453.

international relations to the École des hautes Sciences politiques at Paris, that famous school of diplomacy. The local Press devotes a great deal of attention to international questions, and the leading newspaper, the *Journal de Genève*, from the completeness of its information and the excellence of the editorials of its distinguished foreign editor, Mr William Martin, himself a former member of the Secretariat and Labour Office, is one of the best-informed papers in existence on the League, and unrivalled in its ability to give definite form to the prevailing opinion at an Assembly, Council or other League meeting.

As a result, alarm is sometimes expressed lest the " Geneva atmosphere " should prove too strong for the delegates who attend the League meetings and lead them to sanction " idealistic " and " crank " proposals that are certain to be rejected by their governments. As for the Secretariat, the fact that it lives far from the fateful rush and complexity of the great capitals, in a pleasant little town rather of the tourist or watering-resort type, on the shore of a clear mountain lake, with the green hills rising to the snow-capped Alps in the background, a sheltered nook where the League and its affairs constitute the whole of political life for the foreign community, is said to involve the danger of loss of touch with the prejudices and realities of the outside world. Consequently, members of the Secretariat may lose their sense of proportion and over-estimate the degree to which the League matters in modern affairs.

This criticism, so far as it touches upon the Secretariat, will be discussed later in this chapter.[1] As regards government delegates the point has been put in a striking manner by Marshal Pilsudski, after his visit to Geneva on the occasion of the putting an end to the " state of war " between Poland and Lithuania by the Council in December 1927.[2] The Marshal replied to an interviewer, who asked him what were his impressions of Geneva, as follows :

" There is much good in it all, and what is being done there is extremely useful. But it seems to me that once decisions are taken there is a tendency to get lost in formulas that cause reality to be forgotten. And then, there is something else. There is sometimes a slightly false situation. By this I mean that men who meet intimately at lunch or about a cup of tea, and always have the opportunity of talking with each other, undoubtedly find it easier sometimes to settle questions, but may somewhat lose sight of the importance of the great interests they represent. It is a kind of private camaraderie between men who find pleasure in conversation with each other, and who, after a talk, shake

[1] See below, pp. 198-199, 200-201, 204-205.

[2] See Volume II.

hands. When this is repeated several times a year the illusion may sometimes be created of settling serious differences without their being really settled between the nations themselves." [1]

Marshal Pilsudski is best known to the world as a romantic nationalist and an ex-Socialist turned dictator. But he is also a very shrewd and able old man, with a vast fund of political experience. His visit to Geneva was not only his first contact with the League but his first journey abroad since he left his German prison at Magdeburg to enter his resurrected country in triumph. It is said that he had to buy civilian clothes for the occasion, as he had not been out of uniform since the beginning of the world war! His views on the League are therefore of the greatest interest, not only in themselves, but as representing the impingement on each other of two very different political backgrounds and methods. Obviously, so long as foreign ministers have to reckon with dictators, or do not possess the full confidence of their governments, their authority and the consequent value of their agreement will be correspondingly less. But surely what is at fault here is not that they get on too well with each other at Geneva but that they are not sufficiently supported at home. And in any case it is easy to exaggerate the "personal" nature of these Geneva interviews. After all, foreign ministers and other delegates who attend League meetings are government representatives, accompanied by their advisers and officials, provided with definite instructions and powers, and keeping constantly in touch with their Cabinets on all important matters. Any proposals they adopt are considered with the full knowledge and consent of their governments. If, indeed, it is easier for them to promote and agree on international business when transacted through the League than elsewhere, this shows not that the League is cut off from reality, but that it has become an increasingly important and distinctive part of present-day reality.[2]

Defective Communications

Geneva is in a central position geographically, but communications by rail, air, telephone, telegraph and wireless are all defective.

[1] Interview with Marshal Pilsudski in the *Matin* of December 12, 1927. *Cf.* also *The Times*, January 30, 1928, in the course of a leader urging the necessity for personal contact between American and British statesmen: "Europe has found a remedy for many of its ills in frequent meetings between its Foreign Ministers. The condition of Europe is far better than it was a few years ago, largely because Sir Austen Chamberlain, M. Briand, and Herr Stresemann are close personal friends and continually exchange views on a variety of problems. It is not so easy to meet American statesmen. They are far away, and for them, in view of the present state of American opinion, Geneva is forbidden ground."

[2] For some further remarks on this subject see below, pp. 460-465.

As regards train communications, the trouble is partly rivalry between the French and Swiss railway administrations, the former being reluctant to allow fast trains and good communications between Geneva and the rest of the world through France, as it does not want to encourage Switzerland in becoming the entrepôt for tourist and other through traffic to Italy. Partly, also, it is due to the reluctance of Berne to provide for the aggrandizement of its rival, Geneva, by direct and fast communications either with Germany, East Europe or Italy—and, indeed, Geneva, wedged into a remote corner of Switzerland, is, as it were, naturally a Cinderella of the Swiss Federal Railways. Primarily, the difficulty is financial, for there is no sufficiently heavy volume of passenger and goods traffic throughout the year to make the establishment of good communications a paying proposition.

Much the same difficulties apply to telegraph and telephone communications, whose insufficiency any correspondent who has had to work at a big Geneva meeting can vouch for fervently, and of which the Press officially complained in December 1927, leading to a resolution by the Council. Here, however, the cost is less, and matters have considerably improved since 1924, while further improvements are promised in the near future.[1] The demand for a wireless station in Geneva, which was made by the Transit Committee and unanimously endorsed by the Assembly, hung fire for a number of years owing to the jealousy of Berne, which was reluctant to see its own monopoly interfered with by the erection of a station in the Canton of Geneva. A further proposal is to enlarge and improve the aerodrome at Geneva and install a service of aeroplanes with a distinguishing mark, showing they are in the service of the League, in order to establish rapid communications with Geneva in case of emergencies necessitating, for instance, an immediate meeting of the Council. Aeroplanes in League service would not be held up at any frontier, but go direct to their destination.

Political Difficulties

(a) *The Secretariat*

The remarks just made on the question of communications will have pointed to certain political difficulties experienced by the

[1] Direct telephone conversations are already good between Geneva, Paris, London, Brussels, The Hague, Berlin, Stockholm, Copenhagen, Oslo, Vienna, Madrid and the North of Italy. It is hoped shortly to extend these communications to Warsaw, Rome and the Balkan countries. There is no technical reason why it should not be possible to telephone all over Europe. This and other questions of communications are discussed in detail in the chapter on "Communications and Transit" in Volume II.

League owing to the rivalry and particularism of the Swiss Cantons and the jealousy of the Federal Government at Berne of the growing importance of Geneva. The Swiss Government has had some extremely difficult problems to solve over the setting up on Swiss territory of an international institution of an unprecedented nature with ex-territorial rights for its buildings and meetings and diplomatic status and privileges for its delegates and officials, such as questions of international law, taxation, police protection, jurisdiction of Swiss courts, and so forth. Moreover, whereas, for instance, the diplomatic immunities of foreign representatives are granted on the basis of reciprocity, there could in this case be no reciprocity, and the number of persons coming under the new status was incomparably larger than the staff of any legation. The final compromise assimilates the position of members of the Secretariat to that of the staff of an embassy in the manner described below.

(b) *Representatives accredited to the League*

But a further problem was raised by the growing practice of governments accrediting a representative to the League of Nations or the Labour Organization, or both. Most of such representatives have the rank in their national service of secretary of embassy, but several governments appointed ministers, and Brazil appointed a full ambassador, with two ministers as his assistants. The ranks and designations of these " permanent delegates " vary greatly. Some combine their League function with that of consul in Geneva, while in other cases a country sends a minister who is accredited both to the Federal Government at Berne and to the League at Geneva. Others, again, have a distinct official for each purpose, and it is even said that one or two governments desired to accredit a representative to the League without bothering to have any representative at Berne. This created a further problem; the Swiss authorities pointed out with perfect justice that there is no such thing in international law as representatives accredited to the League of Nations, and that the only diplomatic representatives they could recognize in Switzerland were such as were accredited to the Swiss Government.[1] Therefore they could not recognize any diplomatic privileges or immunities for the so-called " representatives accredited to the League." Here, again, lengthy negotiations produced a compromise by which the permanent delegates at

[1] In the cases, incidentally, where a minister is accredited to both Berne and Geneva, the Swiss authorities are very careful to insist that he should spend at least half his time in Berne, whether he has anything to do in that picturesque but sleepy little country town or not.

Geneva are assimilated to the position of the higher officials of the Secretariat as regards their diplomatic status and privileges.[1]

(c) *The Soviet Union*

The worst difficulty was that of the Soviet Union. Swiss public opinion is in a state of panic and resentment about the Russian Revolution which only readers of *The Morning Post* can really appreciate.[2] The murder of the Soviet envoy, Vorovsky, who in 1923 attended the Lausanne Conference between Turkey and the Allies, and the subsequent acquittal of the murderers, as well as the way in which the trial was conducted and the attitude of the Swiss Press, led to a rupture between the Soviet Union and Switzerland, which lasted until 1927. The Soviet Union declared a boycott of Switzerland and refused to attend any conference held in that country. This was largely responsible for delaying even the measure of co-operation between Russia and other nations at League conferences which now exists.

Again, the question of appointing a semi-official observer of the Soviet Union at Geneva has several times been tentatively raised by the Soviet Government and has broken down on the difficulty —among others—that while the Swiss Government might tolerate the presence of such a person it would certainly not grant him any diplomatic rights, including that of a diplomatic courier.[3] As the Berne Government, under the pressure of a die-hard Swiss public opinion that takes a pride in its own unreason, glories in its refusal to recognize the Soviet Union and tolerate the presence of one of its tainted emissaries at Berne, bringing revolution in his suit-case, it is hardly surprising that the idea of a Bolshevik diplomat at Geneva should not, to put it mildly, be welcomed enthusiastically by the Berne authorities.

Here there is a clear conflict between the rights derived by the Swiss from their national sovereignty and the duties which might be thought to be incumbent upon them in view of the fact that they are the seat of the League, and thus, in a sense, the District of Columbia of the world: the Swiss contend that once

[1] See below, pp. 172-173.

[2] The reasons generally alleged by Swiss victims of this state of mind are that a great deal of Swiss property was lost in the Russian Revolution and some Swiss citizens killed, also that Switzerland suffered from a general strike and an influenza epidemic in 1918. But other nations had greater losses and grievances at about that time, and to blame the Soviet Government for the economic distress, social unrest, and epidemics that followed the Great War is surely political illiteracy and a throw-back to the passions that animated mediæval heresy-hunters and witch-burners.

[3] The Swiss authorities have, in fact, refused to allow a representative of the Soviet Telegraph Agency to be stationed permanently in Geneva, thus taking it upon themselves to censor the relations between the World Press and the League.

they are willing to grant full diplomatic privileges and protection to any Russian delegate attending League meetings, just as they would to delegates of other countries, they have discharged their duty, and it is no affair of any other country whether they do or do not choose to have diplomatic relations with Russia. To this it may be objected that it is their duty to maintain normal relations with all countries which the League invites to its meetings. They can contend that there is no connexion between the attitude of their government to such countries and the attendance of those countries at League meetings only if they extend the exterritoriality of the League at some point to the Swiss frontier so that foreign delegates can enter and leave the seat of the League meetings without traversing Swiss territory. From the moment delegates have to enter Swiss territory and be under the protection of Swiss authorities the relations between their country and the Swiss Government become connected with their attendance at League meetings.

This is obviously a typical case of both sides being right from their own point of view, and the only solution possible is a compromise establishing some sort of *modus vivendi* between Switzerland and countries of interest to the League.

Temporary and Permanent Quarters

The League Secretariat and Library are housed in a former hotel—known by the irony of history as the " Hotel National "—and have overflowed into two or three surrounding buildings. Meetings of the Council, committees and most of the special conferences of the League are held on these premises. The meetings of the Assembly, and occasionally a special conference, are held at the *Salle de la Réformation*, a barn-like structure situated at the other end of Geneva and intended for concerts, lectures, and Calvinist worship. This building is hired by the League when necessary, and a special service of motor-cars run to maintain the connexion between the Assembly or conference at the Reformation Hall and their committees and the central services of the Secretariat at the Hotel National.

The International Labour Organization was even worse off: its meetings were mostly held at the Kursaal (a sort of combined vaudeville show and dance hall), while the office and library were cramped in a former boys' school far out of Geneva. With the building of the permanent quarters of the Organization on a handsome piece of property—the gift of the Swiss Government and situated on the shore of the lake at a reasonable distance from

town—the situation has become better, though still not quite satisfactory owing to the inadequacy of the sum voted for building.

The League, too, has been given a magnificent site on the shore of the lake, next to the new Labour Office, and a striking plan, the result of a competition among architects from countries members of the League, has been approved.

Owing to the munificent gift of $2,000,000 (£400,000) for a League library, made by Mr John D. Rockefeller, jun., and announced at the Eighth Assembly, it will now be possible to fuse the League and Labour Organization libraries into one (for at present there is bound to be a good deal of overlapping in books and duplication of staff), and house this great international library in a really fine building, half-way between the quarters of the League and the adjacent Labour Organization, with really adequate accommodation for material and staff. (At present both the League and Labour Office libraries are cramped for room for their books, and have no funds for supplementing the intelligence service of the Secretariat and Labour Office by systematic and large-scale research work.)

There is hope, therefore, that in a not too remote future the League may be housed in such a way as not only to accommodate all its meetings, conferences, archives and staff in the same place, but also to give some kind of outward and tangible expression to the great idea of world effort and concord for which it stands.

THE SECRETARIAT-GENERAL

Rival Theories

At the outset there was a difference of opinion at the Peace Conference concerning the nature of the Secretariat that is best stated in the words of the first Secretary-General himself[1]:

"Two theories were prevalent [at the Peace Conference]. The first was that the Secretariat should be composed of national delegations of the various members of the League. Each delegation would be paid for by the Government of the country from which it came, and be responsible solely to that Government. The practice which had prevailed at international conferences previous to the foundation of the League of Nations would thus be continued, while the duties of the Secretary-General would be largely confined to the co-ordination on special occasions of the services of the national delegations on the Secretariat, and to the centralization of administrative functions.

"Those who advocated the second theory held that the Secretariat should form, as far as was practicable, an international Civil Service, in which men and women of various nationalities might unite in preparing and presenting

[1] In an article contributed by Sir Eric Drummond to *The World To-day* of March 1924.

to the members of the League an objective and common basis of discussion. They would also be entrusted, it was proposed, with the execution of any decisions ultimately taken by the Governments. Under this scheme the Secretary-General would not only be the co-ordinating centre of the activities of the Secretariat, but its members would be responsible to him alone, and not to the Governments of the countries of which they were nationals, and would be remunerated from the general funds of the League.

"The old system had not given altogether satisfactory results; and when the members of a committee set up by the Plenary Peace Conference met to consider the matter of organization I strongly urged that the second plan should be adopted. International conferences in the past had often suffered from the lack of any organized international preparatory work, and we felt that it was exactly in this domain that a new system was required if the League were to fulfil the purposes for which it had been founded. It seemed to us that it would be of great value if an expert and impartial organization existed which, before discussion by the national representatives took place, could draw up objective statements of the problems to be discussed, and indicate those points on which it seemed that the Governments were generally in accord. If this could be done, we held that discussion by the Government representatives would be automatically limited to matters where divergence of view really existed—and all who have had experience of international affairs know how much this increases the chances of reaching a definite and successful result. Further, we maintained that the execution of decisions should be entrusted to people who, being the servants of all the States Members of the League, could be relied upon to carry them out with complete freedom from national bias."

Nature and Status

Sir Eric Drummond, the first Secretary-General, persuaded the Organizing Committee—the body set up by the Peace Conference to constitute the Secretariat—to accept his view, and thereby ensured the Secretariat-General of the League becoming a new and unprecedented institution in the history of the world, a true international civil service, whose members are not responsible to any individual government, but exist to serve the States Members of the League collectively for the purposes laid down in the Covenant. "All positions under or in connexion with the League, including the Secretariat, shall be open equally to men and women," according to Article VII. of the Covenant, which further lays it down that "representatives of the members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities. The buildings and other property occupied by the League or its officials or by representatives attending its meetings shall be inviolable." Under this article the Swiss Government allows full diplomatic immunities, including customs immunity to the higher officials of the Secretariat, from the Secretary-General down to and

including Chiefs of Section. The other officials are not allowed customs immunity, but, as a matter of courtesy, their personal luggage is practically never opened at the frontier. Identity cards are issued to officials, who are divided into three classes according to their rank. Delegates to League meetings have all diplomatic privileges and immunities, including special police protection if they so desire. The buildings and property of the League are ex-territorial, and order is maintained within them by special private police employed by the Secretariat for League meetings.

Work of the Secretariat

The functions and constitution of the Secretariat-General are indicated in Articles II., VI., VII., XI., XV., XVIII. and XXIV. of the Covenant, and implied in the rest of that instrument, as well as in other parts of the peace treaties and in the so-called "minorities treaties." They have further been defined and developed in the course of the League's work. The Secretariat prepares the data on which all League conferences and committees work, as well as organizes and serves the meetings of all League bodies. It acts as a connecting link between the different parts of the League's machinery and between these and the individual governments members of the League. The Secretariat keeps the archives of the League and acts as a clearing house for the transaction of all League business.

Information on International Matters

In the latter capacity it bids fair to become a centre for the distribution of information on international subjects to which there is no parallel in the world. As the importance of the League in international affairs increases, the records of League meetings become to an increasing extent a source of information on the international activities of the world, whether in political, technical or humanitarian fields. In addition some sections, such as the Health and Economic sections, publish periodical bulletins containing statistics and other data from every country in the world, that could be collected only by an institution such as the Secretariat.[1] The catalogue of publications of the League Secretariat is now a volume of fifty pages, and increases from year to year.

Registration of Treaties

Of even greater importance is a function mentioned in Article XVIII. of the Covenant: "Every Treaty or international engagement entered into hereafter by any member of the League shall

[1] For a description of these publications see the portion of this chapter devoted to the various sections of the Secretariat (pp. 186-191).

be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such Treaty or international engagement shall be binding until so registered." The object of this article is to make it impossible for states to conclude secret treaties, as this practice is held to be vicious and one of the factors that led up to the situation culminating in the world war. Under this article some three hundred treaties a year are registered and published in the so-called Treaty Series of the League of Nations.

No paper article can, of course, make it impossible for two states to conclude a secret treaty if they so wish. It does mean, however, that neither of them can appeal to the League on the strength of obligations arising out of an unregistered treaty, and it further means that any party or newspaper in the country concerned, or any other country, can denounce the existence of such a treaty, on the ground that the government concerned had no right as a member of the League to make it and that it is not binding until registered. As things stand at present there is an opinion of a committee appointed at the behest of the Second Assembly to the effect that this article imposes the obligation on members of the League to register a treaty as well as sign and ratify it before it can come into force. At the same time the committee suggested a modification of the text, enabling states not to register treaties on the understanding that they could not in such a case appeal to the League on any matter arising out of such treaties. The Third Assembly refused to settle the matter one way or another, and pending final settlement left it open to states to take either view of the obligations imposed by this article.[1] But as states have tended more and more to solve the question of security through the League the possibility of a revival of the alternative system of secret agreements has receded into the background. Apart from this it is probably impossible, with democratic constitutions and free presses existing in most countries, to conceal the existence of any secret treaty, and a state which was discovered concluding such a treaty would no doubt suffer at the hands of public opinion in its own and other countries.[2]

[1] See below, pp. 464-465.

[2] In many countries, too, the constitution forbids the conclusion of treaties without the approval of Parliament, which of course makes secrecy impossible. The French Government has a military agreement with Belgium which was not registered on the plea that its military provisions depended for their effectiveness on their secrecy. The political preamble of this agreement, stating the terms on which it came into force, was however registered, which the French considered sufficiently discharged their duty under Article XVIII. In any case this agreement has since been subordinated to the terms of the Locarno treaties, so that the point is no longer of practical importance. The same applies to the "understanding"

The Staff

(a) *Number*

To discharge its functions the staff of the Secretariat [1] numbers close on 600 members of fifty nationalities—namely, a Secretary-General (British), Deputy Secretary-General (French), three Under Secretaries-General (Italian, German, Japanese), five Directors (British, French, Norwegian, Polish, Spanish), one Legal Adviser (Uruguayan), one Treasurer (South African), five Chiefs of Section (Italian, British, American,[2] French, German), about a hundred members of Section (divided into classes A and B), and the rest subordinate staff, such as the so-called Intermediate Grade (also divided into classes A and B), secretaries, assistant secretaries, clerks, typists, personnel of the Roneo, registry and distribution sections, messengers, telephone operators, house staff, etc. etc.

(a) *National Composition*

In view of the fact that the official languages are English and French [3] and the seat of the League is in Geneva, a French-speaking

that probably exists between the French and Polish general staffs as to their respective mobilization plans in the contingency contemplated by the Franco-Polish Treaty, which has been registered, and whose operation has been subordinated to the Locarno agreements.

[1] A report adopted by the Eighth Assembly gives the following figures for the growth of the Secretariat:

FIGURES SHOWING INCREASE OF STAFF SINCE 1920, EXCLUDING HOUSE STAFF, ETC.

Total	*Year*	*Permanent Staff*	*Number on Probation*	*Temporary Officials*
183	1920	183	..	..
347	1921	285	..	31
368	1922	296	17	23
386	1923	268	39	40
424	1924	295	45	48
442	1925	288	69	47
467	1926	322	34	68

(It should be noted that the totals given in the column on the left of that indicating the years are greater, except for 1920, than the sum of the figures in the right-hand columns. Possibly the totals include house staff, whereas the right-hand figures do not.)

[2] There are some half-dozen Americans in the Secretariat, who either got their contracts at the time it was still believed America was about to enter the League, or are working in sections whose activities are partly financed by American funds, or are essential to the maintenance of contact between the Secretariat and the United States, which, although not a member of the League, co-operates in a great many League activities, and part of whose public opinion takes an active interest in the progress of the League.

[3] This means that League publications are issued in both languages and all League meetings are held in both—that is, League interpreters translate English speeches into French and *vice versa*. Occasionally a very long technical publication with a small circulation is by common consent printed only in one language on grounds of expense. Occasionally, too, an English-speaking representative on the

town, most of the subordinate posts must be filled by persons whose native language is either French or English. The same holds good of, *e.g.*, posts in the translators' and interpreters' section, which, although ranking high from the point of view of pay and position owing to the skill and knowledge required, possess no political importance. This fact has given rise to the legend that there is an undue proportion of British and French officials in the Secretariat. The truth is that in the posts possessing political importance (*i.e.* down to and including members of section, but not including the interpreters and translators) the mixture of nationalities is thorough, and the proportions as even as can be expected considering that fitness for the work in hand and not nationality must always be the primary consideration.[1]

SALARIES AND ALLOWANCES

Another point often made against the Secretariat is the supposed extravagance of its administration and the excessive salaries paid to its officials. There was probably a certain lavishness in the first two years of the Secretariat's existence, for many of its members came straight from war-time administrations in belligerent countries, where the atmosphere was scarcely conducive to rigid economy. Moreover the Secretariat was an institution that had to be built up, with no precedents to serve as guide, and in what was then one of the most expensive towns of Europe. It always costs more to organize an administration than to administer an already established organization. Since then, however, the League's administration and finances, including the Secretariat, have come in for possibly more than their share of the economy wave that swept over the world, and can now challenge the severest scrutiny.[2] The first six years of the League saw the Secretariat change from a small body of pioneers to a big, highly organized and extremely efficient machine.

The scale of salaries for League officials was based on that of

Council or some committee will waive his right to have French speeches translated. But any state may employ any language, provided it supplies its own interpreter to translate into one of the official languages (German representatives habitually avail themselves of this privilege. A tradition has been established by which a German delegate representing his government supplies his own interpreter, at least on all formal occasions, while experts invited by the League, or a ward of the League such as the President of Danzig, are translated by the Secretariat). Any state has the right to have League publications issued in its own language, provided it pays for the publication. Some publications of the Health section have a German edition, and the Information section publishes its pamphlet series and *The Monthly Summary* in a number of languages.

[1] For details on the national composition of sections see below, pp. 184-193.

[2] Do in fact incur it at every Assembly, as appears in the chapter (XI.) on the finances of the League.

the British civil and diplomatic services, with allowance for the fact that Geneva was more expensive than London and that the factor of expatriation had to be taken into account.[1] Geneva is less expensive now, both relatively and absolutely, than it was in 1920, and salaries have consequently been reduced by about three per cent., according to a sliding scale based on the cost of living. The higher officials, from the Secretary-General down to and including the Chiefs of Section, have a seven-year contract only, as a rule non-renewable, and without pension. The seven-year period is, however, being extended in the case of several of the original officials,[2] so as to allow for a gradual transition from those who founded the Secretariat to the new generation of officials that is coming in simply to work a machine they find ready-made.[3] Members of section also have a seven-year contract, but renewable up to twenty-one years,[4] and other officials seven-year contracts

[1] Because officials are not given life contracts and the highest officials nothing equivalent to pensions, although by cutting themselves off from opportunities in their home countries by working at Geneva they will be under some disadvantage when it comes to finding fresh posts after the termination of their contracts with the League.

[2] By the time of the Eighth Assembly, a French and an Italian Under Secretary-General and five Directors—a Canadian, a Dutchman, a Frenchman, a Spaniard and a Swiss—had left, as well as the American chief librarian. (In the first few months of the Secretariat's existence there was an American Under Secretary-General, who resigned when it became clear that the United States were not going to be a member of the League.)

[3] *Cf.* the following extract from the report on the Secretariat of the Fourth Committee, adopted by the Second Assembly:

" To the *higher officials* it does not, in our view, seem possible to give long-term engagements. The international character of the League of Nations and the legitimate desires of the Member States render it essential that systematic changes should take place in the higher posts of the Secretariat in order to enable them to be filled by persons of any country whatsoever who are of recognized importance and widespread influence among their own people, and whose views and sentiments are representative of their national opinion. This principle of frequent changes is essential to make the League a living force among the nations. On the other hand, there could be no question of depriving the Secretariat of its leaders just when the experience which they have gained by the study and solution of the various problems with which they may have to deal would be of most value. It is, therefore, clearly advisable that members of the higher staff should serve for a sufficiently long period to enable their work to bear fruit, and that they should not be replaced simultaneously. When this temporary difficulty has been duly met, a maximum period of seven years for members of the higher staff (Secretary-General, Deputy Secretary-General, Under Secretaries-General and Directors) appears to be the correct solution. In view of the considerable emolument assigned for these higher officers, we do not in their case recommend pension or gratuity on retirement. In exceptional cases these officials may be reappointed."

(Since this report was adopted the grade of Chief of Section has been created and put in the same class.) On the subject of frequent changes see below, pp. 202-203.

[4] *Cf.* the following remarks in *op. cit.*:

" *Members of Section and Officers of Equivalent Grades* (*Classes B and A*).—These officers perform important duties. Under the direction of the higher staff they carry out all the intellectual and administrative work of the Secretariat. These require high educational qualifications, and, in the upper ranges, demand very considerable capacity and qualities of initiative and resource.

" We are of the opinion that the principle of frequent changes should be applied

with the option of renewal up to twenty-eight years. At the end of every seven years there is a sort of overhauling of the official's position, and if his work is not completely satisfactory, or it is decided to suppress the post, he may be dismissed or degraded without further ado. For some years there was no possibility of legal redress, for the Secretary-General and his representatives are non-suable. But the Eighth Assembly adopted a scheme for an administrative tribunal, composed of independent jurists, in order to remedy this condition. The compulsory retiring age is sixty years. Officials on contracts renewable up to twenty-one or twenty-eight years pay 5 per cent. of their salaries to a provident fund: the League adds an equal amount from its general budget and the whole accumulates at from 4 per cent. to 5 per cent. interest, and the lump sum is given to the official on the termination of his contract in lieu of a pension. In addition to the regular contracts the various sections may engage temporary staff to cope with some big meeting, or to work for anything from six months to five years (the maximum for a short-term contract) on some particular task.

The scale of basic salaries (*i.e.* without allowing for the reduction on account of the cost of living) is as follows (see opposite page), annual increment in each case not being automatic but having to be earned by the official in question and specially requested each year by his official superior:

to members of this grade of the staff—whose duties are of a diplomatic and political nature similar to those of the higher personnel—only in cases where permanent officials can be detached from their national administrations for a definite period of service with the League without losing their rights of pension or promotion, or being troubled by doubts, so harmful to good work, as to their careers in their own countries. We recommend that steps should be taken to secure the loan of the services of such officials wherever possible."

(For comment on the last sentence see below, p. 196, and Professor Rappard's and M. Martin's remarks quoted below, pp. 201-204.)

Secretary-General: 100,880 Sw. francs (£4000); together with 63,050 Sw. francs (£2500) Entertainment Allowance and House Allowance of 25,220 Sw. francs (£1000).[1]	Non-renewable seven-year contracts; without provident fund.
Deputy Secretary-General (1): 75,660 Sw. francs (£3000); plus 25,220 Sw. francs (£1000) Entertainment Allowance.	
Under Secretaries-General (3): 75,660 Sw. francs (£3000) and 12,610 Sw. francs (£500) each Entertainment Allowance.	
Legal Adviser (1): 75,660 Sw. francs (£3000); with 12,610 Sw. francs (£500) Entertainment Allowance.	
Directors of Section (5): Salaries beginning at 41,000 Sw. francs (about £1600), rising by 2500 francs (£100) annually to 53,000 francs (about £2100).[2]	
Treasurer (1): 45,000 Sw. francs (about £1800).	
Chiefs of Section (5): from 28,000 Sw. francs (about £1000), rising by 1000 francs (£40) annually to 33,000 francs (about £1300).	
Members of Section, Class A (about 50): from 19,000 Sw. francs (just under £800) by 800 francs (about £32) to 28,000 francs (about £1100).	Seven-year contracts, renewable up to twenty-one years; with provident fund.
Members of Section, Class B (about 50): from 13,700 Sw. francs (about £550) by 800 francs (£32) to 19,000 francs (just under £800).	
Members of the Intermediate Class, A and B (about 20): from 10,000 Sw. francs (about £400) by 300 francs (£12) to 14,400 francs (£576).	Seven-year contracts, renewable up to twenty-eight years; with provident fund.
Secretaries of Section (8): from 10,000 Sw. francs (£400) by 300 francs (about £12) to 16,250 francs (about £650).	
Secretary Shorthand Typists: from 8700 Sw. francs (£348) by 250 francs (£10) to 11,250 francs (£458).	
Bilingual Shorthand typists: from 7500 Sw. francs (£300) by 250 francs (£10) to 10,000 francs (£400).	
Shorthand Typists and Clerical Assistants: from 7000 Sw. francs (£280) by 200 francs (£8) to 9500 francs (£380).[3]	

[1] The salary and allowances combined of the Secretary-General amount to £7500 a year, which is about half the salary and allowances of a first-class ambassador, such as, *e.g.*, the British ambassador in Paris. It is, of course, a matter of opinion as to which post involves greater responsibilities and more work, but the general tendency seems to be to look upon the post of Secretary-General of the League of Nations as the highest in international diplomacy.

[2] In addition to his salary, the Director of the Information Section gets an Entertainment Allowance of 600 francs (£30) monthly.

[3] These are only the main divisions. There are various subdivisions and special posts, such as Library, Registry and Distribution staff, Translators and Interpreters, Roneo, etc., and various special rates for locally recruited staff, temporary staff, telephone operators, messengers, porters, charwomen, etc., into which it is not necessary to enter.

In addition to the entertainment allowances for certain of the higher officials there is a general Entertainment Allowance Fund, from which officials not provided with a special entertainment allowance, down to and including Members of Section, may draw on certain conditions, such as the presentation of vouchers for the outlay incurred, a maximum that must not be exceeded, and subject to the approval of their official superiors. Officials when travelling are allowed their tickets and a subsistence allowance, which in the case of higher officials, down to and including Chiefs of Section, is sixty francs (£2, 5s.) a day; Members of Section forty francs (about £1, 15s.), and other ranks thirty francs (£1, 3s.).[1] Officials are paid a second-class fare to their home countries and back once a year for their annual holiday. Holidays in the case of higher ranks, down to and including Members of Section, are nominally thirty-six working days (six weeks), and for the rest twenty-eight working days (four weeks).[2]

Officials are not taxed on their salaries and allowances. This is partly because of the difficulties and injustices that would arise between officials from different countries, who would be taxed in different proportions at home, and partly because the position of the officials of the Secretariat has been assimilated to that of the staff of a Legation in a foreign country. Article VII. of the Covenant stipulates that " representatives of the members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities." Consequently, as stated above, officials of the Secretariat enjoy a diplomatic status, which includes diplomatic passports, and in the case of the higher officials (all on non-renewable seven-year contracts) customs immunity.

These facts and figures are available in the League's official publications,[3] but it has seemed desirable to put them on record here in view of the widespread ignorance on the subject. At the same time it must be remembered that they do not mean much in themselves, as the factors of expatriation and cost of living, the absence of life-contracts and the slight chance of promotion from one class to another, owing to the desire to give as many nationalities as possible representation and the recruiting from outside,

[1] The allowance is less on boat journeys, and is reduced if the official stays more than ten days at any one spot, etc.

[2] Nominally, for it happens not infrequently that officials cannot absent themselves for the whole of the period, but there are arrangements by which a certain number of days can be carried from one year to the next, with various limiting conditions.

[3] Particularly the report on the budget adopted by the Second Assembly.

are difficult to estimate and the Secretariat is a unique institution hardly to be compared with any Government department. The most significant fact, perhaps, is that the best members in the Secretariat have almost all refused higher salaries elsewhere on more than one occasion,[1] while some sections (particularly the so-called technical sections) experience increasing difficulty in recruiting new members with the required qualifications. Only the Secretariat can tell how many " potential " cases of this sort there are, but even an outsider can see that the present level of capacity is often higher than the level of pay, and could command a higher price outside. It is said that this difficulty proved serious when it came to recruiting German officials in 1926-1927. The League is getting something for nothing—or for love, according to the point of view—from many of its officials.

PRESENT CONDITIONS OF WORK

Another accusation sometimes heard is that the Secretariat is overstaffed and underworked. This, however, was not the opinion of Sir Austen Chamberlain at the December 1926 meeting of the Council, when, as summarized in the Minutes of the meeting

" Sir Austen Chamberlain drew the attention of the Council to the conditions under which the Secretariat worked at present. There did not appear to be one week in the year when there were not one or more Committees in session, and the Council knew from its own experience what additional heavy work a session involved for the Secretariat. The position of the members of the Secretariat was quite different now from what it had been at the beginning, and it did not seem possible to ask them to continue to work so hard all the year round."

Sir Austen, who had at the time he made this statement been for nearly two years British representative on the Council, was, it will be admitted, in a position to speak with knowledge. And few will deny that the word of Sir Austen Chamberlain on what constitutes hard and conscientious work has the greatest weight.

Moreover, his opinion was endorsed by the Eighth Assembly,

[1] The head of the Economic and Financial Section of the Secretariat gave up a £6000-a-year salary as Secretary-General of the Reparations Commission—something like a thirty-year job!—in order to take a seven-year contract at £2000 in the service of the League. A French member of the same section earning £1100 took an appointment as director of the French branch of an American bank at $10,000 (£2000), with perquisites and residence in Paris, every good Frenchman's Mecca. Another French member, also connected with the League's economic work, earning £800 at Geneva, got a post likewise in an American bank at Paris at double his League salary. These examples illustrate the extent to which recruiting for League posts must compete with private employment, either in banking, business, law, medicine, engineering or other fields.

which adopted a report on the "Present Conditions of Work in the Secretariat," [1] declaring that:

"There can be no doubt that the work of the Secretariat in a material sense has increased continuously from its beginnings in 1919 up to the present time. This increase has shown a tendency to operate more rapidly during the last eighteen months than in the earlier periods. . . .

"The number of meetings held in connexion with the various activities of the League has steadily increased from year to year. Though many are only of short duration, it not infrequently happens that several take place simultaneously, while some of the more important Conferences and Commissions have been in session for periods varying from thirty to ninety days. The hours of work are greatly prolonged at such times, and though, in the case of certain Sections, it is possible to arrange for night and day shifts, as in the Shorthand and Typing and Duplicating Services, it is manifestly impossible to make a similar arrangement in the case of the more specialized or expert staff, who are thus obliged to be on duty for eight or ten hours a day, and occasionally even longer. Again, though Saturday afternoon is normally a half-holiday, many members of the Secretariat are rarely able to avail themselves of this privilege, either on account of the increasing work in their Section or because its staff is not at full strength. A certain amount of Sunday work is also unavoidable, especially during the period of preparation for an important Conference, as, for instance, the International Economic Conference.

"A League meeting differs in some important features from purely national meetings. Perhaps the most important of these is due to the fact that the delegates called to a League meeting can, as a rule, dispose of but limited time for such meetings. In these conditions the work has to be done with the greatest possible celerity.

"Again, the fact that all transactions must be carried on in two official languages adds special difficulty to the work of the Secretariat. In point of time, the duration of many meetings is nearly doubled owing to the necessity of interpreting all speeches. Then, as regards secretarial work, all documents must be translated and circulated in the two languages before they are discussed. This fact has obvious consequences upon the time, expense and number of staff necessitated by League work.

[1] This report was first presented to the June 1927 Council meeting, when the Secretary-General remarked, as recorded in the minutes, that the facts it set forth spoke for themselves and required no comment.

"The only point he would emphasize was that it would be quite clear from the report that the administrative and secretarial work falling on the Secretariat had increased in a proportion very much greater than the staff itself. The Secretariat had been able to cope with the work because of the increased experience which had now been acquired, but a limit would be reached, and he would be very grateful if the Council would agree that the report which he had prepared should be forwarded to the Assembly so that the delegations would have full knowledge of what the Secretariat was now doing, and because it had felt bound to ask for some slight increase in staff in order to cope with the increase of work, which had become very great. While in 1926 (as was shown in the first annex to his report) the number of meetings had been far greater than that for any other year, in 1927 that number would be far surpassed. The number of Committees and Sub-Committees remained about the same, but the number of Conferences had increased, with the result that the strain on the Secretariat had been very great."

" A special feature of the Secretariat's work in connexion with Conference, Committee and other meetings is that of rendering proper assistance to the Press. The number of journalists present at such meetings, especially at the Council and the Assembly, has very greatly increased. In 1926, 386 were present, as compared with 196 in 1920. Eighty-three representatives of the foreign Press now reside permanently in Geneva.

" The preliminary work which is undertaken before a Conference actually takes place is of great importance and often imposes almost as great a strain on the Section concerned as the Conference itself. The necessity of such work, however, will easily be realized; the success of such Conferences depends in no small measure on the thoroughness of the preparation, and this preparation, whether directly performed by the Secretariat or not, is inevitably a source of work in the material sense.

" It will be seen from the figures shown in the various annexes to the present report that the output of work in a material sense has increased and is increasing at a considerably greater rate than either the staff of the Secretariat itself or the expenditure which has to be met by the Members of the League. This fact is due partly to the gradual improvement in organization which any institution whose foundation has been so recent as that of the Secretariat should be able to show, partly also to the willingness which has been shown by all concerned not to spare themselves in any way, but to make it their only object to carry out efficiently the work which has to be done."

These statements are backed up by facts and figures, some of which are quoted below. The following tables are given of overtime and sick-leave statistics, prefaced by the remark that they are given to illustrate the increasing strain that has been of necessity imposed on the Secretariat and that :

" In this connexion it should be noted that overtime can only be claimed by members in receipt of a salary of less than 10,000 Swiss francs per annum; and all claims must show that the overtime was worked by the direction of a competent superior official, and (in the case of special overtime) that the work was unavoidable and could not be done in normal hours.

" It should be noted that overtime is counted only when 44 hours have been worked—*i.e.* an ordinary full week including Saturday afternoon, plus two additional hours, making a total of 44 hours. These hours, which were fixed by the Assembly in 1921, are generally considered to be exceptionally long.

" (*a*) OVERTIME

Year	*Number of Persons*	*Ordinary Hours*	*Special Hours*
1924	508	4713	2847
1925	934	4952	4798
1926	1178	7511	5318
Total in 3 years	2620	17,176	12,963

"(*b*) SICK LEAVE TAKEN BY MEMBERS OF THE SECRETARIAT 1924-1926

Year	*Total Staff*	*Number Sick*	*Percentage on Total Staff*	*Days of Illness*	*Number of Cases*	*Average Number of Days per Case*	*Average Number of Days per Head on Total Staff*
			Per cent.				
1924	471	157	33·7	4·934	192	25	10·5
1925	490	167	34·9	4·151	205	20	8·5
1926	514	220	42·8	4·673½	279	16	9

"A very careful check is kept on the amount of sick leave granted; no member of the staff is allowed to be absent from the office on sick leave for more than three consecutive days without furnishing a medical certificate and without confirmatory advice from the Medical Adviser to the Secretariat."

Organization and Functions

(a) *The Secretary-General, Deputy Secretary-General, Under Secretaries-General and their Offices*

The Secretariat-General is divided into a number of sections and departments under the general control of the Secretary-General, Deputy Secretary-General and three Under Secretaries-General, and their offices.

All the officials of the Secretariat are appointed by and responsible to the Secretary-General, subject in the case of the higher officials to the approval of the Council. In practice, Directors select the officials of their sections, subject to the approval of the Secretary-General, aided by the Appointments Committee. The Secretary-General spends a good deal of his time visiting the countries members of the League, partly as a ceremonial function, partly also in order to get into personal touch with statesmen and leaders of opinion, familiarize himself with the general position in the countries visited, and bring home to them the fact that the Secretariat is a civil service which is equally at the disposal of all governments members of the League. All questions of policy must be approved by the Secretary-General, as well as all correspondence on such matters. The Directors of the different sections can deal independently of the Secretary-General only with the purely expert and technical side of the work entrusted to them. The Secretary-General's office consists of a private secretary and two personal assistants (an Englishman and a New Zealander, Members of Section Class A and B respectively), together with three secretary shorthand-typists for the purposes of the office.

The Deputy Secretary-General, like the three Under Secretaries-General, is kept generally informed on all that happens, and is consulted by the Secretary-General on important points. He is

responsible particularly for the sections of the Secretariat concerned with the technical and humanitarian work of the League (Financial and Economic, Transit, Health, Opium Traffic, etc.). The Deputy Secretary-General's office consists of his two personal assistants (both French, one A and one B Members of Section), a private secretary and two secretary shorthand-typists.

The Italian Under Secretary-General also has an office consisting of two personal assistants (Italians, Members of Section Class B), a private secretary, and one secretary shorthand-typist. He is the highest authority (subject, of course, to the Secretary-General) for all questions of internal administration and discipline, appointments, etc.

The German and Japanese Under Secretaries-General are the Directors of the International Bureaux and Intellectual Co-operation and Political Sections respectively. Each has a small office composed of members of his own nationality.

In addition, the Legal Adviser has practically the status and functions of an Under Secretary-General. His position roughly corresponds, as the title implies, to that of a legal adviser in a Foreign Office, and he has at his disposal the Legal Section to help him in his work.

A point sometimes made against the organization of the Secretariat is that the offices of the Secretary-General and Under Secretaries-General each form a compact national nucleus. It is suggested that these officials should take personal assistants of different nationalities, so as to approximate the organization of their offices to that of the different sections. To this it may be urged that the very nature of the functions of these officials necessitates, above all, a relationship of complete confidence and easy informal intimacy with the official and political world of the countries of which they happen to be nationals, and that for this reason it is important that their personal assistants should be of the same nationality. A further criticism made by the Norwegian delegate, Mr Hambro, at the Eighth Assembly was that the Great Powers only are represented in the five highest posts in the Secretariat and that it was about time a national of a small Power held such a post.

(b) *The Sections and Departments*

The Sections and Departments of the Secretariat may be grouped into three classes:

1. *Those serving the whole League or the Assembly and Council directly* (Political, Legal and Treaty Registration, and Information Sections).

The Political Section is responsible for security questions, and

helps the Secretary-General "to make," as directed by Article XV. of the Covenant, "all necessary arrangements for a full investigation and consideration of any matter in dispute referred to the League by the parties"; or by Article XI. (namely, questions referred to the Council not as disputes threatening a rupture but for mediatory and conciliatory action); or Article X. (cases of aggression or threat or danger of aggression referred to the Council); or Article XVI. (a call for the application of sanctions against a state alleged to have resorted to war in violation of its obligations under the Covenant); or Article XVII. (making the Covenant as regards disputes and sanctions applicable to a dispute between a member and a non-member state). The Director of this section is the Japanese Under Secretary-General, and its members are a Czechoslovakian, an Englishman, a German, a Greek, an Italian and a Swiss.

The Legal Section helps the Legal Adviser in giving advice on points of law that occur in the framing of draft conventions or other documents, or on any of the technical, humanitarian, administrative, political or other activities of the League, most of which are based on treaty agreements, and practically all of which have some aspect that touches upon the interpretation of international law. The Secretariat end of the work on codification of international law and on arbitration is in the hands of this section. The Legal Adviser and his section act as advisers in a similar capacity to the committees and conferences, as well as the Council and Assembly of the League.[1]

A department of this section, presided over by a Spaniard, carries out the work of treaty registration entrusted to the Secretariat under Article XVIII. of the Covenant, and is responsible for the publication of the so-called Treaty Series. The report adopted by the Eighth Assembly states of the Registration of Treaties office:

"This office has experienced a steady development of work since its institution in May 1920, not only on account of the constantly increasing number of treaties registered annually, but also on account of the other duties with which it is now charged in connexion with the Conventions and Protocols concluded

[1] In fact, however, most delegations are provided with their own legal advisers, and prefer to consult them individually or collectively, or a special committee of jurists, on any important points. Very important points arising out of disputes are generally referred to the Court for an advisory opinion. The Legal Section has, on the whole, failed to be a section of first-class importance during the first years of the Secretariat, probably owing to the fact that its first Director was not a first-class legal luminary. The post has now, however, been converted from that of Director to a post equal in rank to that of an Under Secretary-General, and it may therefore be hoped that this section will gain the position which is its due. *Mutatis mutandis*, these remarks apply also to the Political Section, which might have been expected to be one of the most important in the Secretariat, but failed to become so during the early years of the League.

under the auspices of the League—*i.e.* the preparation of the texts in their final form of these Conventions and Protocols, and all the relevant formalities and correspondence pertaining to the signatures, ratifications, adhesions and denunciations of such agreements.

" The following table shows the increase in the number of treaties registered :

May 19th, 1920, to May 19th, 1921	112
May 19th, 1921, to May 19th, 1922	151
May 19th, 1922, to May 19th, 1923	161
May 19th, 1923, to May 19th, 1924	189
May 19th, 1924, to May 19th, 1925	251
May 19th, 1925, to May 19th, 1926	305 "

The Legal Adviser is a Uruguayan, and the members of his section are a Belgian, a Dutchman, an Englishman, a Frenchman, a German, an Italian and a Spaniard.

The Information Section is analogous to a Foreign Office Press bureau ; it is responsible for organizing the publicity of all League meetings and activities, particularly as regards the Press, but also for keeping persons and organizations interested in the League (*e.g.* the League of Nations Union, the American Foreign Policy Association, professors of international law, writers and politicians) in touch with events. The section edits a periodical giving an account of all the League's activities, known as *The Monthly Summary*, which appears in English, French, German, Italian and Spanish,[1] as well as a series of pamphlets describing the organization and activities of the League and kept up to date from year to year (these also are published in a number of languages), and provides photos, slides, films, illustrated albums, postcards, and schoolroom exhibits. Special articles are turned out from time to time, as well as *communiqués*, which are issued practically daily at the Secretariat or wherever a League meeting may be held.

The eighty-odd correspondents stationed permanently at Geneva, representing most of the big papers and agencies of the world, are taken care of by the Information section. The arrangements for looking after the four hundred correspondents coming to the Assembly are elaborate and complete, and include negotiations with the telephonic and telegraphic administrations of Switzerland and neighbouring countries to get special facilities and rates. The broadcasting of certain parts of the Assembly meetings is another matter arranged under the auspices of the Information Section. The section keeps in touch with the leading newspapers of most countries, and edits a daily Press review, reviewing the comments on the League and connected matters,

[1] A Czech translation is published by the Czechoslovak League of Nations Society.

for the use of the Secretariat. The Director of this section is a Frenchman, and the members are an American, Belgian, Chilean, Chinese, Cuban, Dane, Dutchman, two Englishmen, a Frenchman, German, Italian, Japanese, Lithuanian, Pole, Serb, Spaniard, Swiss and Uruguayan.

The report adopted by the Eighth Assembly states that:

"The Information Section, as a general section responsible for all matters of information, publicity and Press, has naturally had a very great increase in work, especially in the last year, with an Extraordinary Assembly, the Disarmament Conferences, the special Press Conference, and the Economic Conference, the latter alone bringing 200 journalists to Geneva and requiring the dispatch by the section of 47,000 documents.

"The increase both in the amount and importance of League work in Geneva, and consequently in interest in the League outside Geneva, has been exactly reflected in the work thrown on this section. The number of journalists regularly stationed in Geneva and requiring daily service has grown from a handful in 1920 to 83 at the present moment; the number who come to each Council has greatly increased with the recent presence of the Foreign Ministers; the number at the Assembly has grown from 196 in 1920 to 386 in 1926. Press *communiqués* and statements have necessarily greatly increased; *The Monthly Summary*, which in 1921 averaged 12 pages in two languages, now averages 30 pages in six languages; and, since 1923, 17 pamphlets on various activities of the League have been published, all in the two official languages, and one or two in fourteen languages.

"Requests for information from abroad are constantly increasing; considerable groups of students, travellers, etc., are more and more coming to the headquarters of the League; and members of the section are frequently called upon, whether for special work with League of Nations missions or for special conferences, as the Pan-Pacific Conference in Honolulu and the World Education Conference in Toronto.

"Finally, the Conference of Press Experts required a very wide consultation of Press groups, the convocation this past year of three special Committees, and much research and study."

2. *The Sections serving some advisory, technical or administrative organization* (Economic and Financial Section; Transit and Communications Section; Health Section; Social Section; International Bureaux and Intellectual Co-operation Section; Disarmament Section; Mandates Section; Administrative Section, dealing with the Saar, Danzig, and national minorities).

The functions of these sections will be described in the chapters dealing with the activities of the organizations in question. It will suffice to say here that the Economic and Financial Section issues a number of special publications, such as memoranda on public finances, on central banks, on currency, on the application of the recommendations of the Brussels Conference, on armaments, and so forth, as well as publishing *The Monthly Bulletin of Statistics*, which gives information on price fluctuations and figures for industry, commerce, navigation, public finance, etc., in most of

the countries of the world. This section is probably the only centre in the world where information of this sort is collected from nearly all the principal financial administrations and issued in the form of reports that are, and have to be, not only complete but rigorously accurate, since they have to stand the scrutiny of some fifty-odd Treasury departments. They are being used to an increasing extent by such departments, and by banks, financiers, business houses, etc., as well as by economists. The head of the Economic and Financial Section is an Englishman, and the members are an Argentinian, Austrian, Belgian, Bulgarian, Czech, Dutchman, two Englishmen, a Frenchman, German, Greek, Indian, two Italians, a New Zealander, a Pole and three Swedes.

Of the Economic and Financial Section the Eighth Assembly's report says :

" Since 1920 the work of this section has developed in many different directions, particularly during the last three years.

" The schemes for financial reconstruction in Austria and Hungary and for the settlement of refugees in Greece and Bulgaria were quite unforeseen at that time. Their preparation involved far-reaching technical inquiries into public finances and central banking ; the establishment of special League organizations in the countries concerned ; the publication of periodicals and special reports ; and, in general, the whole responsibility for co-ordinating the work done in those countries with the decisions taken by the competent authorities in Geneva.

" Apart from this, certain tasks in the financial field have involved additional labour and expenditure—*e.g.* a series of Committees on Double Taxation, Counterfeiting Currency, etc., and the preparation and publication of their reports.

" On the economic side there have been, apart from the ordinary meetings of the Committee, a General Conference on Customs Formalities and a very large number of Technical Committees—*e.g.* on commercial arbitration, bills of exchange, unfair competition, economic crises, etc.

" A very wide and important extension of the section's work—*i.e.* in statistics—has taken place. There has gradually grown up during these five years a whole series of periodical technical publications—*e.g.* on Balance of Payments and Foreign Trade Balances, Currency and Central Banks, Public Finance and *The Monthly Bulletin of Statistics*, requiring a large mass of detailed and highly technical work.

" In addition, it has been recently occupied with one of the most considerable tasks it has yet undertaken—*i.e.* the preparatory work for the International Economic Conference, which involved extensive inquiries and the preparation of over sixty technical memoranda."

The Transit and Communications Section publishes a number of memoranda and reports in connexion with the work of the organization of which it is a part. It is directed by a French Chief of Section and consists of a Canadian, Dutchman and German.

The Health Section issues a number of publications—namely,

a weekly *Epidemiological Intelligence Bulletin*, compiled from cable and telegraphic information from all corners of the world, which is distributed to health administrations ; a fuller monthly *Epidemiological Bulletin*, which includes information sent by post and analyses the figures received ; and an elaborate annual *Epidemiological Survey*. The section is also responsible for a series of handbooks on, respectively, the methods of comparing vital statistics in use in a number of countries, and the general organization of a number of national health services. The latter series is summed up in the *Annual Health Yearbook* which shows the progress achieved in public health matters in the countries under review. Here again the Secretariat, through its competent section, has become a unique source of reliable and authoritative information, collected from all over the world, and issued in a clear, practical and readable form for the use of both private individuals and official or semi-official organizations. The Director of this section is a Pole, and the members are an American (temporary), Czech, Dane, Englishman (temporary), Frenchman (temporary), German, Hungarian, Italian, Japanese, Pole (temporary) and Swiss (temporary).[1]

The Social Section, which acts as the secretariat of the Committee on the Traffic in Opium, and the two committees on, respectively, Traffic in Women and Children and the Promotion of Child Welfare, issues reports and memoranda in connexion with the work of these committees. It is directed by Dame Rachel Crowdy (British). The members are an Australian, Belgian, Norwegian and Spaniard.

The Section of International Bureaux and Intellectual Co-operation keeps in touch with such international bureaux as may come under the auspices of the League in pursuance of Article XXIV. of the Covenant, as well as acting as the secretariat of the Committee on Intellectual Co-operation. The Director is the German Under Secretary-General. His personal assistant is a German (an A member): the members are a Finn and a Roumanian. A good deal of the work previously performed by this section has now been taken over by the Institute of Intellectual Co-operation in Paris, whose functions are described in the chapter on intellectual co-operation in Volume II. The section issues an annual handbook of international organizations.

[1] The large number of temporary members is explained by the fact that several branches of the Health Organization's activities are financed from temporary grants supplied by the Rockefeller Foundation, as is explained in the chapter on " World Public Health " in Volume II.

The Disarmament Section issues a number of reports and special documents in connexion with its work as secretariat of the various committees and sub-committees through which the League has been dealing with this question since its foundation, and is also responsible for issuing an armaments yearbook, giving data on the armaments of practically all the chief countries, as well as a yearbook on the world's trade in arms and munitions and war material. A regular supply of information of this sort is an essential factor in the work not only of forming schemes for the reduction of armaments but in the education of public opinion and supplying the public with a means to counteract war and armaments scares and stunts of all sorts.

Of this section the Eighth Assembly (*ibid.*) says :

" The work of the Disarmament Section has increased considerably owing, amongst others, to the following causes :

" (1) The gradual lapsing of the various systems of supervision of the disarmament clauses of several treaties of peace, which has resulted in Council decisions implying preparatory work towards the application by the Council of the right of investigation invested in it by the same treaties.

" (2) The growing importance and bulk which, at the suggestion of successive Assemblies, has been given to the two yearbooks prepared and published by this section. The *Trade in Arms Yearbook* has more than doubled in size since its inception; the *General and Statistical Yearbook on Armaments* now comprises data about nearly every nation of the world. As none but official sources are utilized, its preparation implies a close study of an immense number of official original documents emanating from the countries concerned.

" (3) The fact that the studies towards the application of Article VIII. of the Covenant by means of a Convention of General Disarmament have entered an official phase, which has determined a period of intense activity, as shown by the considerable number of meetings which the Commission and its Sub-Commissions have held during 1926 and are holding in 1927.

" The section has had to issue more than 480 printed pages in each language as a result of its 1926 work in this connexion.

" During the first three months of 1927 the Disarmament Section has been responsible for two hundred and sixty-six sittings (Committee of Experts on Civil Aviation, Committee of Experts on Budgetary Questions, Committee appointed to study Article XI. of the Covenant, Special Commission on the Private Manufacture of Arms, Council Committee, Sub-Commission B of the Preparatory Commission, Preparatory Commission for the Disarmament Conference).

" During the last nine months of 1926 the section was responsible for two hundred and fifty-eight sittings (Committee of the Council, Committee on the Private Manufacture of Arms, Preparatory Commission for the Disarmament Conference and its Sub-Commissions A and B, Joint Commission together with its Sub-Committees 1, 2 and 3).

" These Commissions, etc., were in session almost without interruption. More than 1000 documents, all of which had to be translated and duplicated, were received in connexion with their work. It is calculated that, between

May 19th and November 5th, 1926, 3,750,000 sheets of Roneo paper were circulated on this subject."

The Director of this section until January 1, 1928, was a distinguished Spaniard (Señor Salvador de Madariaga). The Director since that date is M. Erik Colban, a Norwegian, who was Director of the Minorities Section from the earliest days of the League until his new appointment. The members are a German and a Venezuelan. In addition the members of the section include a British naval, French military, and Italian air secretary of the so-called Permanent Advisory Commission on Military, Naval and Air Questions, who under the constitution of that commission are regarded as seconded to the League from the service of their governments, but are treated as members of the Secretariat during their service in Geneva.

The Mandates Section consists of an Italian Chief of Section, an American and a Danish member.

The Administrative Commissions and Minorities Questions Section has a Spanish Director, and consists of an Australian, Colombian, Dane, Irishman, Persian, Peruvian, Spaniard, Swiss and Slovene.

3. *The Internal Services*—namely, the Registry (receiving, filing and circulating documents from outside among the different sections [1]), the Distribution Branch (sending out League documents and distributing same in the sections), Roneo and Duplicating Service,[2] Typists Pool,[3] Establishment Office, Treasury

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[1] *Cf.* the following table in the Eighth Assembly's report:

STATISTICS OF DOCUMENTS DEALT WITH BY THE REGISTRY (JULY 1919—MARCH 1927)

Year	*Incoming*	*Outgoing*	*Total*
1919 (six months)	3,669	1,984	5,653
1920	13,230	7,043	20,273
1921	22,558	11,312	33,870
1922	23,018	14,401	37,419
1923	28,172	20,413	48,585
1924	31,515	22,138	53,653
1925	31,063	21,742	52,805
1926	34,067	24,369	58,436
1927 (first three months)	10,651	6,589	17,240

[2] *Ibid.:*

STATISTICS OF STENCILS CUT AND NUMBER OF COPIES MADE BY THE DUPLICATING SERVICE FROM 1923 TO 1926

Year	*Stencils*	*Copies*
1923	55,410	7,729,449
1924	62,300	8,844,715
1925	60,331	9,380,740
1926	89,348	12,438,306

[3] *Cf.* the Eighth Assembly's report (*ibid.*): "The personnel of this department

Department, Publications and Precis Writers' Section, and Translators' and Interpreters' Section.

Of the latter the Eighth Assembly (*ibid.*) remarks :

" Six years ago the bulk of the translation work required of this department was of a political and general nature, for which the essential qualifications were a good style and accuracy. Since then its character has entirely changed; three-quarters of all the translation work is now highly technical, often involving specialized knowledge of such subjects as medicine, serology, epidemiology, transport, military and naval matters, aviation, economics, chemistry, public finance, international and commercial law. The work is done with the greatest possible accuracy, virtually everything being revised by the Editor and Assistant Reviser. The amount of translation is about twice as much as in 1921.

" Since 1921, verbal interpreting has increased about five times. This calculation is based on the number of days the interpreters are on duty. The interpreters are engaged for about four-fifths of their time in interpreting; the remaining fifth is occupied in translation work.

" It is hardly necessary to say that, as a natural consequence of this increase, the administrative work of the section has been considerably augmented."

The functions of these services are sufficiently indicated by their names, and the question of nationality plays practically no part.

comprises at the moment about 62 stenographers and copyists, as compared with 50 in 1921, but for various reasons it is rarely at its full strength. In the first place, a large proportion of the stenographers are constantly engaged by the translators and précis-writers, who have no subordinate staff of their own beyond a secretary or two to assist with the general administrative work of the two departments. Other members of the department are constantly in demand by the various sections to replace absent secretaries or stenographers. A certain number are always absent on annual leave, sick leave or official business for the League away from Geneva. It is therefore but seldom that more than 20 stenographers in each language are present at the same time, and, in spite of all the measures taken to maintain this average by engaging temporary staff when necessary, it frequently falls below it. If, during one of these short-handed periods, the requests for assistance from the sections increase, the pressure is greatly intensified, and the lot of the stenographers is by no means enviable, as they must work at high speed for seven hours or more without cessation, often leaving a task already begun to deal with one of greater urgency. Five years ago the average number of requests for stenographers received from the sections was from 40 to 60 per day; they are now never less than 60 and sometimes amount to 120.

" The copyists, of whom there are but ten, are detached during the sessions of the Council and other meetings for work with the verbatim reporters. As this branch functions intermittently more than six months in the year, it will be seen that the personnel of the main department is often seriously depleted by this cause. The ordinary routine duties of the copyists (circular letters, reference lists, statistical tables, etc.) are therefore accomplished by the stenographers during any odd intervals which may occur in their work.

" Lastly, it should be added that the work of this department is not always done during normal hours. The Council and other meetings render it necessary to have a staff which will prepare during the night the documents needed for the next morning's session. This dislocation of the normal life of the staff now occurs with increasing frequency."

Last, but not least, there is the Library, which by 1928 had nearly 100,000 books, together with periodicals from all over the world. The Library specializes in modern history, the Treaty Series, diplomatic records, books on every aspect of international relations, parliamentary and state papers, as well as dictionaries, atlases, and in general all the material that can be useful to the delegates and experts who attend League meetings, as well as the members of the Secretariat. The Library has a Dutch head, and is run on the American system—that is, on the idea that its contents are for the use not only of officials and delegates but of the public, and that the chief purpose of a library is to give people what they want promptly and with as little fuss as possible. The merit for this is due to Miss Florence Wilson, the American librarian, who built up and organized the League library in the first six years of the Secretariat's existence.

In each section there are frequent (sometimes daily) section conferences. The higher officials, from the Secretary-General down to and including Chiefs of Section, meet weekly in the so-called Directors' Meeting. On some questions two or more sections may co-operate. The Legal Section is consulted by all sections on the juridical aspects of the questions dealt with. All official documents are submitted to a drafting committee to see that they come out in a proper form and that the French and English texts coincide. For internal matters of appointments, discipline, etc., there are various secretariat committees, such as a Judicial or Disciplinary Committee, a Library Committee (to help the Library to select books), a committee on Health Insurance, an Appointments Committee, etc. A Latin American Bureau, presided over by a Panamayan, helps the various sections to keep in touch with Latin America.

Offices outside Geneva

The Secretariat has offices in Berlin, London, Paris, Rome and Tokio as centres of information on League questions and points of contact with the governments and public opinion of the countries concerned, as well as to serve as a *pied-à-terre* for League officials or delegates. The Epidemiological Intelligence Service of the Health Section has an office at Singapore to collect information by cable and wireless in the Far East, and to relay it by cable to the head office at Geneva.

Recruiting of New Members

Recruiting of new members was in the beginning almost entirely a matter of personal selection, since there were no rules to go by

and no standards to comply with. Gradually, as the Secretariat has developed into an established organization with definite lines of work in each section, a system of combined examination and selection has grown up.[1] Here, too, the position is complicated by the fact that it is desirable to take account of the national and also what might be called the governmental factor: an official of the Secretariat, while he must not represent or look upon himself as representing any particular government, is an official in an inter-governmental institution and so must not, as a rule, when appointed be directly objectionable to the government of the country of which he is a national.[2] A candidate whose qualifications seem satisfactory to the Secretary-General (these qualifications are sent in in writing: a candidate is sometimes suggested by a League delegate or other member of the government concerned, or by some prominent private citizen known to the relevant official of the Secretariat, or sends in an application direct, or is suggested by a member of the Secretariat) is brought to Geneva, where he is interviewed and given some kind of test. If he emerges satisfactorily from this ordeal he is taken on for a year's probation, and given a permanent contract only if he proves satisfactory in every respect during this year.

In general, members of the Secretariat are not recruited direct from the universities, but are people who already have done practical work in a field similar to that of their post on the Secretariat (*i.e.* a member of the Health Section of the Secretariat has generally previously been a Medical Officer of Health: a member

[1] *Report of the Fourth Committee to the Second Assembly*: "Selection of the Staff.—As a result of the exceptional circumstances which governed the creation of the League of Nations, the staff was at first appointed almost exclusively by individual selection by the Secretary-General or by his principal officers acting in his name, in virtue of the powers expressly conferred upon him by the Covenant. We have already testified our high appreciation of the quality of the present staff.

"This system of recruiting, however, which was the only possible one in the initial period, must be replaced, as a general rule only to be departed from in very special cases, where the necessity for such departure can be established, by that of 'competitive selection.' . . .

"The Committee lays special stress upon the great desirability, especially in regard to the high administrative posts, of recruiting the staff both of the Secretariat and the International Labour Office as far as possible in equitable proportion from the various States Members of the League. It recommends that this principle should be carefully observed whenever fresh appointments may have to be made in the future, always bearing in mind, however, the necessity of obtaining competent officials."

[2] It is said, however, that cases have occurred where governments have attempted to put pressure on the Secretariat in order to get some official of their own nationality dismissed who happened to be unpopular with the existing regime of the country in question, which had come into existence since his appointment, but that these efforts failed and the Secretariat is very much alive to the necessity for maintaining its purely international and "a-governmental" status. For a somewhat different view see, however, the remarks of Professor W. E. Rappard, quoted below, pp. 201-202.

of the Information Section is often an ex-journalist or ex-Press Bureau man, etc.).

A few members of the Secretariat have been in the diplomatic or civil services of their respective countries, and still fewer are considered by their national services as seconded to the Secretariat for a period of years with the right to return to their national services subsequently with seniority accumulated in their absence. Some such arrangement has the advantage of keeping the Secretariat more closely in touch with the governments of the countries concerned, but an obvious danger, of course, is a loss of independence and too great attention to purely national points of view. The danger is that the official should come to look upon himself as the representative of his government or foreign office at Geneva and his stay at Geneva as only a step in his career in his home service. On the whole it would seem preferable that Secretariat officials should be free from any ties of this sort, and that their intimacy with and influence on the international policy of governments members of the League should be a direct "function" of the prestige of the League and their own usefulness and capacity to inspire confidence as its servants.

At present, national traditions are so incomparably more powerful, conscious and coherent as to involve a real danger of their swamping the nascent and struggling cosmopolitan tradition of the Secretariat.[1] Later on, when the traditions, prestige and organization of the Secretariat have been solidly established, and governments have got into the habit of expecting it to take a world view on world questions and consulting it fully and freely on League matters, the Secretariat will be strong enough to "digest" a limited number of junior civil servants and diplomats seconded to League service for two or three years. In this case and with these limitations the proposed arrangement would undoubtedly have great advantages, both from the point of view of keeping the Secretariat in closer touch with governments and civil services and from that of teaching the members of the latter to understand the League and take an objective and intelligent view of international questions. It is still difficult for national officials to realize that such views, so far from implying neglect of the interests of one's country, are, on the contrary, the best calculated to promote genuine national interests.[2]

Qualifications of a Secretariat Official

The survey of its nature and work just given shows that the Secretariat is indeed a unique institution, and the ideal Secretariat

[1] See below, pp. 201-204.

[2] See below, pp. 200-201.

official would have to show a unique combination of qualities. He must be somewhat of a reformer, in the sense that he is part of a machine that stands for a new idea. At the same time he must be a civil servant who realizes that he is working for all the governments members of the League. He must be a diplomat, in the sense of knowing how to deal with representatives of "foreign" governments, and with men and women of different nations on sometimes very ticklish and delicate problems of international relations. He must often be a highly trained specialist either in law, public health, finance, or some other subject, and nearly always a bit of a linguist.

THE GROWTH OF THE SECRETARIAT

In the beginning the questions dealt with by the League were of small importance: the governments were quite ignorant of how to tackle them by the new method and practically the only League machinery in existence were the Council, Assembly and Secretariat. In those days the Secretariat did almost all the work, and the Council and Assembly either adopted their suggestions or did nothing. As time went on governments developed a staff of national servants and government representatives, either through special League sections in their foreign offices and permanent delegates at Geneva, or simply in the course of working through the League, that knew a great deal about the League's procedure and possibilities. At the same time the League's machinery was completed by the setting up of a network of expert committees which acted as intermediaries between the governments, either individually or meeting in the Council and Assembly, on the one hand, and the Secretariat on the other. The authority and importance of League discussions increased *pari passu* with the elaboration of League machinery. The result of these developments was that the Secretariat did more work, and more important work, than ever, but a smaller share of the total.[1] To this may be added the influence of the post-war wave of exaggerated nationalism, which influence has been felt throughout the development of the League and was expressed in the following report of the Fourth Committee, adopted by the Second Assembly, revealing an attitude of suspicion toward the Secretariat:

"We recommend with special urgency that in the interests of the League, as well as in its own interests, the Secretariat should not extend the sphere of its activities; that in the preparation of the work and the decisions of the various organizations of the League, it should regard it as its first duty to collate the

[1] See above, pp. 131-132, and below, pp. 480-482.

relevant documents, and to prepare the ground for these decisions without suggesting what these decisions should be; finally, that once these decisions have been taken by the bodies solely responsible for them, it should confine itself to executing them in the letter and in the spirit."

On the whole, however, the Secretariat has succeeded during its first few years in the important task of winning the confidence of the governments and becoming the essential, vital link in the world machinery of the League.

ITS RELATION TO THE GOVERNMENTS

The Secretariat corresponds in the international field to a civil service within a state, but differs from a national civil service as the Council and Assembly differ from Cabinet and Parliament. In a national civil service the factor of nationalism, so far as it enters in at all, acts as a cement between the civil service and its government. In the case of the Secretariat, nationalism works in an exactly contrary way, for it tends to make governments distrust Secretariat officials as "foreigners" under the influence of a possible rival, or at best as representing a body of states with whose purposes any one government at any given moment may not feel completely in sympathy. Moreover, whereas a national civil servant has only one government to serve, League officials have fifty-odd governments as their masters, and when some of the latter fall out over any question the Secretariat have no clear guide as to their action. Their only course is, then, to try to bring the various views together, work out a practical compromise on the basis of the Covenant, or, in general, suggest some way out that will be acceptable. For, whereas guidance from above (*i.e.* government instructions, not divine guidance) may fail, the ground under the feet of the Secretariat is firm—namely, the Covenant. This ground affords a more immediate and clear-cut basis for Secretariat action than does a national constitution to the activities of a national civil service, for League tasks are more circumscribed and more closely related to their constitutional basis than are the national activities of its component governments.[1]

It should, however, never be forgotten that the Secretariat is the servant of *governments*, not of nations at large. As a body it has, therefore, the imperative and fundamental duty of possessing the confidence of the governments members of the League. The carrying out of this duty imposes a particularly delicate task on

[1] Somewhat in the same way as, for instance, the powers and functions of a federal government and its government departments are fewer and more clearly defined by the constitution than those of a government in a highly centralized state.

the higher officials, who must in some sort serve as intermediaries between the governments of the countries whose nationals they happen to be and those of the rest of the League, talking League to their governments and explaining the point of view of their governments to their colleagues in the Secretariat. The task of intermediary is often ungrateful in the sense that the official discharging it appears to the home authorities as the mouthpiece of Geneva and to Geneva as the mouthpiece of the government of his country. To say that a Secretariat official must be " impartial " is a truism, but it does not alone solve the difficulty, for an essential part of his work must be to bring about agreement between different countries, including his own, and for this reason to show he understands their point of view and can explain what they really think and how far they are really prepared to go to meet each other. To be persuasive and convincing it is not sufficient to be impartial—it may, indeed, sometimes be necessary to give the impression to the man you are persuading that you are partial in his favour and yet are reluctantly forced to point out difficulties and inadequacies in the course he suggests!

RELATIONS WITH GOVERNMENT DEPARTMENTS

One aspect of the relations of the Secretariat to governments is the adjustment of its relations with national civil services. In the Latin countries, where civil servants are downtrodden and underpaid, and where a minister is accompanied by a personal assistant or *chef de cabinet*, who is responsible for giving him information and advice that in England would be given by the permanent under-secretary of the minister's department, and who in general acts as a sort of intermediary between the minister and his civil service, the Secretariat's problem is simpler, for it is practically reduced to dealing with two persons—namely (in order of importance), the *chef de cabinet* and the minister. In the new states, where civil services are only just being built up, the latter have come into existence contemporaneously with the Secretariat, and have been used from the beginning to reckon with its existence, and to consider it natural that their ministers should consult Secretariat officials directly and take their advice on League matters. In these countries, indeed, the Secretariat has great prestige, and even a member of section is treated as the equal of ministers and high national officials. The case is quite different in Great Britain and Germany, where large, powerful national civil services have long existed with a tradition of collective anonymity and *esprit de corps* and a healthy contempt for the politicians who come and go from

time to time. These civil services are apt to regard the Secretariat as a collection of amateurs, interlopers and foreign cranks, of the necessity of whose existence they are not at all convinced.

Here, again, the factor of prime importance is the political evolution of governments, for the attitude of civil services sooner or later reflects the degree to which their governments take the League seriously. Almost as important is the education of the national civil services in the practical importance of internationalism. This will come partly as a result of the work they are actually called upon to do on international questions, for officials who come again and again to League committees or conferences generally begin to take a personal interest in their work and, if they are keen and able, apply constructive imagination to it much in the spirit that they do to their national work.[1] This process might be accelerated if it were made part of the civil service examinations to learn something of the particular branch of the League concerned with the department to which the candidate aspired to enter. A knowledge of the League's organization and record in public health, for instance, should be considered a necessity for those seeking posts in the Ministry of Health, just as the international control of the traffic in opium and dangerous drugs or in combating the White Slave traffic should be part of the mental equipment of a Home Office official concerned with such subjects. French is compulsory for anyone entering the diplomatic service. Surely a grounding in the nature and record of the League, on which our foreign policy, by the agreement of all three parties in the state and of several Imperial conferences, is based, should be just as important for the budding diplomat.

A third factor is the establishing of good personal understanding and relations between Secretariat officials and the particular national officials concerned with their branch of League work. A good Secretariat official knows not only the general working but the *cuisine intérieure* (*i.e.* personal relations, idiosyncrasies, hopes and ambitions) of the staff of the government departments with which he is in touch in the different countries, whether Foreign Offices, Treasuries, Boards of Trade, Ministries of Health, Home Offices, or what not. As his work consists largely in co-ordinating the activities of national departments and their governments wherever their work enters the international field he has a pretty clear idea of the relation of his section, and the League in general, to the work of the national departments concerned. The same

[1] See below, pp. 477-479.

often cannot, however, be said of the latter, which as corporate entities, and apart from the views of individuals, sometimes neither understand nor are interested in the relation of the League to their work, and may even resent what they consider its interference.

Dangers and Possible Lines of Development

(a) *Dangers*

The great task of the Secretariat is to remain a *practical* body, to keep in the full tide of world affairs and in close touch with governments, while keeping its feet on the Covenant and its eye on the purposes of the League. The danger of the Secretariat is ossifying into a bureaucracy or breaking up into national cliques or volatilizing into a propagandist body. The first is a danger that will tend to increase the longer the Secretariat exists and the more smoothly it works; the second is a reflection of the nationalism of the governments members; the third is a state of mind against which the members of the Secretariat must be eternally on their guard. At present it is the second danger which would appear the most serious, for we are still in the period of post-war reaction and power in most countries is in the hands of nationalists, conservative politicians and pre-war diplomats, who tend to look upon Secretariat officials as dangerous because they will not consent to regard themselves as national civil servants seconded from home to fight their country's battles at Geneva.

So good an authority, indeed, as Professor W. E. Rappard (who was Director of the Mandates Section for the first five years of the Secretariat and has since, as Rector of Geneva University and member of the Mandates Commission, kept closely in touch with League matters) appears to believe that the pressure of nationalism is actually making itself felt within the Secretariat, to judge from the following remarks made by him in the summer of 1927[1]:

> "Of the four Under-Secretaries appointed in 1920 . . . none was a professional diplomat. To-day, three out of four of them are. Although still theoretically responsible to the Secretary-General alone, they, as well as many other recently appointed officials, were all chosen in close consultation with the governments of their respective countries. That a man who has begun and probably intends to end his career in the diplomatic service of his own country should not consider himself to be loaned to the League for purposes not solely international, while temporarily occupying a position of political importance to which he has been appointed on the express recommendation of his own government, is more than one may expect of human nature. And that a Secretariat largely

[1] In a lecture to the Geneva Institute of International Relations, appearing in the Proceedings of the Institute for 1927 (*Problems of Peace*, 2nd series, Oxford University Press).

constituted of men thus seconded by their governments should still be held to be entirely impartial when dealing with questions affecting the prestige and interests of their respective countries is more than common sense will admit. But [adds Professor Rappard] the fact that certain governments have brought increasing pressure to bear on the Secretariat is a proof of the growing political importance they attach to the League. . . . Furthermore it is obviously conducive to prompt and easy international co-operation if the governments called upon to co-operate are represented in Geneva by officials who enjoy their full confidence."

Apprehensions of a similar nature were expressed in certain parts of the Press—notably by the *Journal de Genève*—at the announcement of a new law in Italy, by which any Italian holding any post abroad, including any international post, was bound under various pains and penalties to keep in touch with the local representatives of the Italian Government and to give up such post immediately, and without the right to reason why, on being ordered to do so by his Government. Professor Rappard, in the lecture already quoted, suggests that the position frankly adopted by the Italian Government " is perhaps not very different from that more discreetly assumed by others," and adds that, " so long as that position remains unchallenged by the League as a whole, it will be very difficult, to say the least, to consider all members of the Secretariat as entirely above the suspicion of national partiality in their international functions."

M. William Martin, the able and well-informed foreign editor of the *Journal de Genève*, comments as follows on " The Rôle of the Secretariat " :

" The Secretariat is the tie-beam of the group of institutions set up by the States Members of the League. Its international character and technical competence are what give the Secretariat its value. And to acquire the international mind and the requisite high degree of technical competence, stability and duration in their functions are necessary to the officials of the Secretariat.

" In the beginning the Secretariat possessed this double character. The Secretary-General gathered about him men highly qualified by their previous work, representative of their countries, but in no way depending on their governments. No national administration can be compared in the quality of its staff and the spirit animating them with the Secretariat of the League of Nations as it was in the beginning.

" Unfortunately time has revealed two dangers. The first is instability. It dates from the deplorable decisions taken by the First Assembly. At that time the delegates had only one concern—to prevent the formation of an international ' bureaucracy.' Or rather they were concerned with something else —namely, to assure for their nationals a slice of what many looked upon as a cake, not to say a cheese.

" As a result of this state of mind the duration of contracts was strictly limited and all sorts of precautions were taken to prevent their renewal and

to secure a certain rotation among the members of the Secretariat and among nationalities. This attempt was only too successful. To-day most of the members of the Secretariat, at least those whose capacity gives them chances outside, do not wait for the end of their contracts. They take the first opportunity to escape and sometimes seek such opportunities. . . . The Secretariat is tending more and more to become a station where people serve for a period but where they do not make their careers.

" Such instability naturally prevents the recruiting of a first-class staff. The salaries are not sufficiently high to compensate for the loss of all chances of promotion and the prospect of being without a post after a few years. It also prevents the formation of a personnel of able technicians and still more the creation of that spirit of complete devotion to the international institutions of the League without which they cannot live.

" But on this last point there is something even more serious, and that is the invasion of the Secretariat by national diplomacies. The habit is growing more and more for governments to propose candidates, leaving the Secretary-General with hardly more than the right of choice or of veto. In this way the governments are sure of remaining constantly informed of what happens at Geneva and of being omnipresent in the Secretariat. As for the diplomats, they see in this system the advantage of widening their chances of promotion. Diplomatic services could be quoted where the post of member of section, Class A, in the Secretariat is equivalent to the post of Counsellor of Legation in Paris.

" We are not accusing individuals. Among those recruited in this way there are some who are excellent and even among the best. It is the system which appears to us deplorable in its consequences for the future." [1]

While the authority behind these views, being that of men on the spot and possessed of exceptional competence in matters concerning the League, is such that they cannot be ignored, it must be added that they would appear to do less than justice to the peculiar relation of the Secretariat to governments that has been indicated above (pp. 198-199), with the fundamental duty of possessing the confidence of the governments that this relationship imposes on the Secretariat.

In any case the following opinion, expressed by Mr H. N. Brailsford after a visit to Geneva in the summer of 1927, may fairly be contrasted with these views, for Mr Brailsford is not only an acute observer, but one who would be peculiarly sensitive to dangers such as those touched upon :

" In contact with the staff which Sir Eric Drummond has gathered round him in the secretariat of the League, one is impressed not merely by its ability and its vitality, but even more by its devotion to the international idea. Here are men who came, in mature life, after a purely national training, to an entirely new task. In discharging it, they have gained a vision of the general good of humanity, that has dwarfed and corrected the national outlook which is still that of the circles from which they came. It is not surprising that those members of the staff who come from the small neutral states should learn with

[1] *Journal de Genève*, April 19, 1928.

ease to think internationally; they gain by stepping into a wide field of action. The startling thing is that Englishmen, Frenchmen, and Japanese, who have behind them a stronger national tradition and no sense of the narrowness of the sphere into which they were born, should acquire the international mind with the same thoroughness and consistency. Among these men and women it seems as natural to work for the common weal of all nations as it seems in Paris or in Berlin to work for the exclusive good of France or Germany. . . . The members of the secretariat are the servants of the League; loyalty for them has come to mean devotion to its idea and not to any national flag. Work is the great shaper of men's minds, and this work is sufficiently inspiring to create from the sound stuff of human nature the tools which the world needs for its new task." [1]

(b) *Lines of Development*

As League machinery grows more complex the different parts become more highly specialized: therefore it is probable that the Secretariat, while never losing sight of the prime importance of keeping in touch with governments and world affairs, will gradually become more purely an international civil service and less a semi-political or diplomatic intermediary between governments. This evolution requires:

1. Within the Secretariat—easier promotion, officials coming in in junior posts and working their way up; less recruiting from outside; an extension and regularizing of the examination system, etc.

2. Outside—freer consultation of Secretariat officials by the governments. Governments members of the League must come to consider it as natural and inevitable that Secretariat officials should be consulted on questions connected with the League, whether they are being dealt with at Geneva in the Council or Assembly or in special conferences somewhere else, just as they consult their own treasuries and foreign offices on national questions.

These developments will be made easier in proportion as the members of the Secretariat come to be regarded as purely international officials and not in any way as government spokesmen, and as the governments come more and more to look upon the League as a body of which they are a part, on which they base their policy and which exists to promote the best interests of their countries. The importance of the Secretariat is that it gives toughness and continuity—provides a living backbone—to the constitution of the League. To put it at the lowest, there is a large body of educated and intelligent men and women who have a vested interest in organizing peace, and who apply brains and energy to this task professionally and all the time, with obligations at their backs that force governments to listen to them, as well as the machinery to make their schemes feasible. But it is necessary to realize that the rôle of the Secretariat is limited, and that the

[1] *Olives of Endless Age*, pp. 157-158.

political attitude of governments is here, as throughout the League, all-important. The Secretariat cannot, broadly speaking, take the initiative. The initiative must come from the governments, and to make governments act in the right way public opinion must be converted and educated to the meaning and implications of the League. If the League is to go from strength to strength, smoothly and steadily, and the Secretariat to grow with it in power and usefulness, the officials of the League must always be an instrument —a living and intelligent instrument, a Covenant-bound instrument, but still only an instrument—of the governments members of the League. It is not for the Secretariat to keep the governments on the strait and narrow path—that is the function of public opinion, and any attempt by the Secretariat to usurp this function might destroy its own influence, and thereby delay and distort the evolution of the League. This fact would appear to be well understood within the Secretariat, but should also be realized by friends of the League at large.

CHAPTER VIII

THE INTERNATIONAL LABOUR ORGANIZATION

" The organization of labour is the whole future problem for all who would in future pretend to govern men."—CARLYLE.

" Si vis pacem cole justitiam."—*Motto of the International Labour Office.*

THE International Labour Organization is a fundamental and integral part of the system of world co-operation and conciliation set up by the Peace Conference. Just as the Covenant forms the first twenty-six articles of all the Paris treaties, so the International Labour Organization forms a separate part (thirteen in the treaties of Versailles, St-Germain and Trianon, twelve in the Treaty of Neuilly) in each. Its existence is further mentioned in the first paragraph of Article XXIII. of the Covenant, much in the way Article XIV. mentions the Permanent Court.

SOCIAL PEACE AND INTERNATIONAL PEACE

The view of " our present discontents " that led the Peace Conference to establish this organic connexion between the League and the International Labour Organization was that

" the Constitution of the League of Nations will not provide a real solution of the troubles that have beset the world in the past and will not even be able to eliminate the seeds of international strife unless it provides a remedy for the industrial evils and injustices which mar the present state of society. In proposing, therefore, to establish a permanent organization in order to adjust labour conditions by international action the Commission felt that it was taking an indispensable step towards the achievement of the objects of the League of Nations." [1]

The same view is expressed in the preamble to Part XIII. of the Versailles Treaty, which declares that :

" Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice :

" And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled : . . .

" The High Contracting Parties, moved by sentiments of justice and humanity, as well as by the desire to secure the permanent peace of the world, agree to the following."

(Then follow the forty articles of the constitution of the International Labour Organization.)

[1] Report and Minutes of the Commission on International Labour Legislation of the Peace Conference.

In other words, it was recognized that international peace and social peace are bound up with each other, that in the long run you cannot have peace between states if there is class war within states. It is important to remember that practically the whole civilized world is pledged by the Covenant and Part XIII. of the Peace Treaty not only to recognize this fact, but to try to solve the resulting problems by co-operation and conciliation, which amounts to saying they recognize a further fact of even greater importance: that states and classes are not ultimate realities but mere temporary attempts of humanity to organize its communal life, and so state conflicts and class conflicts must be subsidiary to the great permanent interests of mankind. In this connexion it is relevant to note that countries which have elected to abjure this view, and put state or class first, are logically impelled to postulate a world where violence rules supreme, both within and without the state, and so to deny the very foundations on which the League and the Labour Organization rest.

The constitutional relationship of the League and the Labour Organization will be discussed later in this chapter, but may be summed up by saying that the states which have banded together in a League in order to co-operate in technical and humanitarian matters, and settle their disputes peacefully, have at the same time undertaken to work together in matters concerning labour legislation and protection, but have for the latter purpose set up machinery somewhat different from and practically independent of that through which they work on technical and humanitarian questions or for settling disputes. The conferences, committees and officials of the International Labour Organization are quite independent of their opposite numbers in the Council, Assembly, Secretariat and technical, administrative and humanitarian organizations of the League, but the States Members of the League are automatically members of the International Labour Organization, and the constitution of the latter says nothing about the possibility of including states not members of the League.[1] In this sense the International Labour organization is a part—or rather a separate facet or aspect—of the society of nations that has been constituted in virtue of the Covenant.

This society is a permanent association of states which, by the very fact of becoming associated, have laid the foundations for a world polity, and whose immediate objects are (1) the maintenance of peace, primarily through the Council and the Court, with the

[1] This has, however, been done in some cases. See below, pp. 236-238.

Assembly held in reserve and the general existence and activities of the League exercising an indirect but powerful and continuous influence; (2) co-operation in non-political matters through the technical and humanitarian organizations; (3) the securing of social peace, which like international peace is a function of justice, and like the other two main objects of the League is a slow, world-wide constructive process, the continuous adjustment and integration of conflicting tendencies. But whereas in the first two branches of their activities the States Members of the League work through government representatives only, they operate in the third through their International Labour Organization, in which they are represented not only by their governments but also by employers' and workers' organizations.

ORIGIN OF THE INTERNATIONAL LABOUR ORGANIZATION

The history of the International Labour Organization, like that of almost every other piece of international machinery, goes far back into the nineteenth century, and has its roots in the industrial revolution or, as it has been more accurately called, the "mechanical revolution." The factory system—which had already begun before the industrial use of steam and coal, but received a tremendous impetus through their application—was accompanied by the spread of the theory of *laissez-faire*, which may roughly but not inaccurately be described as the belief that if everyone looks after himself God will look after the lot. The result was to create such appalling conditions in factories, mines and workshops that a few factory owners began to feel anxious, and a handful of reformers became very active indeed. In spite of the outcries of the economists, a beginning was made in legislation limiting the hours of work, particularly for women and children, and imposing an age-limit for the employment of the latter. Very soon, however, the need for international co-operation became apparent: if one country imposed certain limitations on its industrialists and other countries did not, the former would be handicapped in competing with the latter.

Voices in the Wilderness—1816-1850

The first to preach the doctrine of social reform was that famous case of a man born before his time, Robert Owen, who advocated sickness and old-age insurance, compulsory free education, the co-operative movement, and labour legislation both national and international, anywhere between fifty and one hundred years

before their realization. He was followed by other pioneers, such as Villermé, Blanqui and Daniel le Grand in France, and Colonel Frey in Switzerland. The Labour, Socialist and Trade Union movement, which at that time was being constituted on an international basis, took up the matter, and it gradually became part of the common stock of ideas of advanced reformers in the period between 1816 (when Robert Owen bombarded the Vienna Peace Conference with his proposals) and 1890, when action was first taken.

SWITZERLAND THE PIONEER—1855-1890

To Switzerland belongs the honour of being the first country to take up the question officially.

In 1855 an appeal was made by a commission of the Canton of Glaris to the Cantonal Council of Zurich to try to secure international agreement on labour conditions. The idea appears to have been inspired by the success of an inter-cantonal agreement on this subject. In 1876 Colonel Frey presented a motion in the Swiss National Council which ended in a request to the Federal Council (the executive in the Swiss system of government) that the latter should try to summon a conference on the international regulation of labour conditions. In 1881 the Federal Council inquired of the principal industrial states whether they would agree to attend such a conference, but received most discouraging replies.

This rebuff prevented any action for nearly a decade. Meanwhile public opinion was getting more and more interested in the matter. Labour everywhere was enthusiastic about the idea, reformers and economists took it up, wrote books and organized movements, meetings were held, passionate discussions and debates indulged in, motions put forward in the French and German parliaments, etc. In 1887 the Swiss National Council again invited the Federal Council to summon a conference. This time the Federal Council had better success. In 1889 it received some acceptances to a suggested "preparatory" conference, which for various reasons was put off till the following spring. A programme, questionnaire and long explanations were prepared and final invitations sent out for May 5, 1890.

THE BERLIN CONFERENCE, 1890

At this point Emperor William II.'s melodramatic instinct and thirst for prestige became aroused, and in a somewhat abrupt and thoroughly magnificent and Great Powerish manner he issued invitations himself to a conference on the same subject, to be held in Berlin two months earlier than the proposed Swiss conference.

Switzerland being a small state at a time when small states had to mind their p's and q's, and when it was a fearfully difficult business to get an international conference convoked at all, gave up its own carefully prepared plan and accepted the invitation to the Berlin conference. Twelve states — Austria-Hungary, Belgium, Denmark, France, Germany, Great Britain, Italy, Luxemburg, the Netherlands, Portugal, Sweden, Norway and Switzerland—took part in this conference, and voted a series of recommendations declaring the desirability of Sunday rest, regulation of labour for women and children, special regulations for mines, a system of labour inspection, etc., but did not take any definite action.

THE ZURICH AND BRUSSELS CONFERENCES, 1897

But the wave of public opinion kept mounting, and in 1897 two unofficial conferences, one at Zurich of various labour associations, and the other at Brussels of economists, demanded action. The Brussels conference went further: it appointed a committee of three, which, after two years of discussion and various vicissitudes, drew up the constitution of an international association, which after a further year was actually brought into existence at a so-called Congress of Labour Legislation held in Paris in 1900. This Congress was attended by official delegates from Austria, Belgium, Mexico, the Netherlands, Russia and the United States.[1]

THE INTERNATIONAL ASSOCIATION FOR LABOUR LEGISLATION, 1900

Many other countries were represented unofficially by men and women prominent in the question of labour legislation.

The Association was composed of national sections on a wholly autonomous basis, each organized according to the desires of the national section concerned and with its own programme. These sections were composed of labour organizations, reformers and economists, sometimes officials from Ministries of Labour and other individuals from bodies who were interested in labour questions. They were therefore purely voluntary bodies, although they received something amounting to semi-official recognition in various countries, and did not as a rule include any representation of employers or governments. Financial support was derived from voluntary personal contributions and voluntary State subscriptions.

The Committee of delegates representing the various national sections appointed a so-called Bureau to direct the Association.

[1] *I.e.* by six states of which three to-day do not form part of the International Labour Organization.

A permanent international labour office with a regular salaried staff was established at Bâle, under the direction of the Bureau.

AIMS

The aims of the Association were (1) to serve as a bond of union to those who in the various industrial countries believed in the necessity for legislation ; to facilitate the study of labour legislation protecting workers ; (2) to organize an international labour office which should serve as a centre of information and issue publications, including a periodical collection of labour legislation in all countries ; (3) to facilitate the study of labour legislation in all countries and to provide information on the subject ; (4) to promote international agreements on questions concerning legislation for the protection of workers, as well as on an international system of labour statistics ; (5) to organize international congresses on labour legislation.

GROWTH

In a few years the Association numbered fifteen national sections—namely, in Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Holland, Hungary, Italy, Norway, Spain, Sweden, Switzerland and the United States.

FIRST MEETING, 1901

The first delegates' meeting of the International Association for labour legislation was held at Bâle in 1901 and defined the tasks of its international labour office, which was directed to study and compare national legislative measures on labour questions, the solution of the various problems involved in dangerous and unhealthy occupations, the night work of women and the use of poisons—especially white lead and white phosphorus—in manufacturing processes, as well as questions of insurance against accidents and diseases, particularly in their relation to foreign labour.

SECOND MEETING, 1902

The second meeting, held in 1902, was concerned chiefly with the night work of women and the use of white lead and white phosphorus in industry. Each question was referred to an expert commission for study and brought up again at the third meeting, held at Bâle in 1904.

THIRD, FOURTH AND FIFTH MEETINGS, 1903-1906

The questions thus prepared by experts were dealt with at an official conference in 1905, summoned by the Swiss Government, but also primarily composed of experts and looked upon as a preliminary conference to draw up the basis of a convention. Two

draft texts were drawn up, which were adopted in 1906 at a further conference of plenipotentiaries sent by governments. The first of these forbade night work for women, and in due course was adopted by twelve states.

THE WHITE PHOSPHORUS CONVENTION, 1906

The second convention, prohibiting the use of white phosphorus in the manufacture of matches, has become the classic case of the need for international agreement on labour legislation. To manufacture matches with the aid of white phosphorus cost a trifle less than to make them with red phosphorus. Therefore, although white phosphorus caused a horrible and lingering disease—"phossy jaw"—in the workers who handled the stuff, and although red phosphorus was perfectly safe, manufacturers refused to employ the humane process, on the ground that if they did so they could not compete with manufacturers in other countries and so would be driven out of the market. This plea had successfully resisted legislation within the various industrial countries, not only for years, but decades, and formed the topic of innumerable discussions. The convention, although signed by only six states, proved the starting-point for agitation which led to legislation in one country after another, and has finally brought about the practical abolition of the use of white phosphorus, and with it the disease of "phossy jaw."

REGULAR BIENNIAL CONFERENCES, 1906-1913

The Association held regular unofficial conferences every two years from 1906 onward, and by 1913 had thoroughly prepared the information necessary for two further international conventions, one prohibiting the night work of young persons and the other limiting the day work of women and young persons to ten hours. An official conference of technical delegates from sixteen European countries met at Berne in 1913 and adopted two draft texts, which were to form the basis for the work of a diplomatic conference of government plenipotentiaries that was to meet in the following year and frame conventions acceptable to the governments concerned.

In other words, at the time of the outbreak of the war a voluntary unofficial organization existed, two technical and diplomatic conferences had been held, two international conventions were in force, two others drafted and a number of bi-lateral treaties had been concluded on the basis of the reports and information gathered by the Association. A powerful current of opinion in support of this work was rising higher and running more strongly

in all countries, as the needs of interdependence made themselves more acutely felt and the doctrine of *laissez-faire* gradually sank into the background.

THE EFFECT OF THE WORLD WAR

The world war threw the factor of interdependence into glaring relief, and revealed the full extent of the power of organized labour. So great was this power, so wholly did the belligerent countries feel that they were indebted for their very existence to the steadfastness, courage and discipline of the workers in factory, mine and workshop, and to the worker in uniform at the front, that the need for social reform was as much stressed in the speeches of statesmen as the securing of peace. This, in fact, was part of the immense wave of tragic self-deluding idealism by which alone the suffering nations of the world were kept at the ghastly futility of butchering each other. " A land fit for heroes " and " reconstruction " were as familiar phrases as " the war to end war."

THE AMERICAN FEDERATION OF LABOUR, 1914

The American Federation of Labour in 1914 passed a resolution proposing the convocation of an international labour conference composed of representatives of organized labour from all countries and meeting at the same time and place as the Peace Conference. This resolution was widely circulated throughout the trade unions of the world. It helped to prepare opinion, and indirectly was the cause of an inter-Allied Trade Union Conference held at Leeds in 1916, as well as of resolutions by the French General Confederation of Labour in 1915, demanding that " economic and labour clauses " should be inserted in the Peace Treaty.

THE FRENCH GENERAL CONFEDERATION OF LABOUR, AND THE LEEDS CONFERENCE, 1915 AND 1916

The Leeds Conference adopted a resolution which was circulated throughout the trade union movement of both belligerent sides and demanded that the peace terms should remove from the sphere of international and capitalist competition, and assure to the working class of all countries a minimum of moral and material guarantees of the right to work, the right to combine, rights of migration, social insurance, hours and conditions of labour, etc. It asked for the appointment of an international commission to watch over the execution of the labour clauses of the Treaty and to take in hand the organization of eventual conferences of governments of the various countries to improve and develop

labour legislation. It asked that an international labour office should be set up for collecting the necessary material and otherwise preparing international conventions, and suggested that the office already set up by the International Association for Labour Legislation should be chosen to carry out this programme with the collaboration of an "international labour secretariat."

INTER-ALLIED AND INTERNATIONAL LABOUR CONFERENCES, 1917-1918

These resolutions, which received the name of the "labour charter," became the basis of all subsequent resolutions on the subject. They were approved by an inter-Allied labour meeting in London in 1917. A conference at Bâle of labour delegates from the Central Powers and the neutrals framed a series of demands, one of which was that the International Association for Labour Legislation should be explicitly recognized in the Peace Treaty as the medium for the promotion and enforcement of international labour legislation. An inter-Allied Labour and Socialist Conference in London in 1918 repeated the Leeds resolution and asked for a labour representative on each delegation at the Peace Conference. A further inter-Allied Socialist and Trade Union Conference held in September 1918 practically repeated the Leeds programme.

THE PEACE CONFERENCE

The matter was taken up by the governments, and the Peace Conference on January 5, 1919, at the very outset of its career, appointed an international commission for labour legislation, whose purpose was defined as follows:

"that a commission composed of two representatives apiece from the five Great Powers and five representatives to be elected by the other Powers represented at the Peace Conference be appointed to inquire into the conditions of employment from the international aspect, and to consider the international means necessary to secure common action on matters affecting conditions of employment and to recommend the form of a permanent agency to continue such inquiries and consideration in co-operation with and under the direction of the League of Nations."

Mr Samuel Gompers, the President of the American Federation of Labour, was elected president of this commission.

AMERICA'S RÔLE

Throughout the proceedings of this body the United States played a prominent part. What that part was may be gathered by

the following quotations from Mr Henry M. Robinson, one of the three American delegates [1]:

" Like other men of my training and my generation, I have always been, and am now, a confirmed individualist, opposed to all forms of paternalism. . . .

" My economic and labour philosophy was not a very complete equipment to meet in discussion the type of representatives of the other countries who were present, because they were generally the advocates to us of new social, political and economic doctrines which, from my point of view, were academic and not likely to succeed under the existing economic conditions in the world. Fortunately I felt that my viewpoint was shared by the majority of my countrymen present in Paris. . . .

" From the beginning, and continuously, the differences between the old world and the new were very marked, and generally quite definite. . . .

" They had in mind the development of a superlegislature and a super-government which should bring about improved standards for workers everywhere. In our opposition to the attempt to set up a super-government there was no disagreement between the American delegates.

" Even a conservative thinker felt that one of the best ways of holding back Bolshevism and various forms of socialism would be to set up an organization where the labour problem could be discussed and recommendations made for legislation that would tend to meet all proper demands. If an agency could be devised that would give a hearing to the claims of labour and harmonize them with the rights of employers, at least in so far as it is possible to do this at any one time, a valuable contribution would be made to the industrial future of the world. At the same time, it was necessary to take into consideration not only the possible but also the probable dangers in the setting up of any organization that endeavoured to treat such a problem internationally. It was evident that under our political, social and economic system, and under our conditions and laws, it would be impossible, even if it had been desirable, for us to participate in a superlegislature. As this was the desire of practically every representative in the Conference, it will be understood that *our difficulties in preventing the incorporation of such a provision in the Peace Treaty proved onerous.*

" Quite conscious of our responsibility, and conscious also that we were alone in our stand, we undertook to maintain our position and to protect what we believed to be the attitude and belief of the American people. The whole discussion was based on a Draft Convention submitted by the British delegation, which contemplated the setting up of a superlegislature as described. This was largely the work of Sir Malcolm Delevingne, long attached to the Home Office of the British Government, who stated that he had worked on the problem for twenty years and that the draft presented was the result of such work. The Honorable George Barnes presented the draft and argued for its passage.

" I was compelled to resist the creation of a superlegislature, and as this was the most important provision of the Draft Convention, the discussion carried through most of the meetings of the Conference. The other members were nearly all in favour and believed that the position I was taking was obstructive, and while I hoped and trusted that they thought it was in good faith, they believed that it was narrow and unjust. Even some other Americans in Paris, not leaders of organized labour, took the view that the position we

[1] From the introduction to *The International Labour Organization*, by Paul Périgord. The italics are Mr Robinson's.

were taking, as presented by me, was definitely and purposely obstructive. It was, but it was maintained only to protect our people, employees and employers, from a *superlegislature with all the possibilities of control by people whose philosophy, social, economic and political, varied so widely from our own.*"

Translated into European terms this statement means that the Americans, on grounds of social philosophy (*i.e.* a penchant for *laissez-faire*), sentimental regard for sovereignty and apprehensions concerning the legal limitations imposed by the constitution of the United States, which leave labour legislation in the province of the individual states, was chiefly concerned to " water down " the proposals of the other delegations. The main difficulty was as regards the extent to which draft conventions passed at the proposed International Labour Conference should be binding on the countries concerned. With this was bound up the question of the extent to which governments, labour and employers respectively should be represented at the Conference. An extreme project presented by the French and Italian delegations wished conventions passed at the Conference, even by only a two-thirds majority, to be binding on all the states represented at the Conference, *ipso facto*, and without ratification by their legislatures, subject only to appeal to the League Council. This was presumably what Mr Robinson meant by a " superlegislature," but in fact the proposal was never taken very seriously, and strangled in its cradle the moment its parents brought it officially before the committee.

The British proposal put forward by Mr G. N. Barnes, one of the vice-presidents of the Commission and largely responsible for the text that subsequently emerged, suggested that draft conventions passed by the Conference should become binding unless rejected within a year by the legislatures of the countries concerned. The Americans wished the draft conventions to be, in fact, mere recommendations. Finally, an ingenious compromise was evolved, which will be described in detail in the section dealing with the nature and powers of the International Labour Conference.[1]

The second point was in what way the United States should be enabled to put into effect the provisions of draft conventions in view of her constitutional limitations. Finally the system of recommendations was evolved, which also will be described in the section on the International Labour Conference, and Federal States, in so far as their constitution prevented them adhering to conventions on labour matters, were permitted to treat draft conventions as recommendations.[1]

[1] See below, p. 249.

THE ATTITUDE OF THE COMMISSION

In the words of the Report of the Labour Commission of the Peace Conference :

" The Commission were faced by a serious dilemma which threatened to make the establishment of any real system of international labour legislation impossible. On the one hand its range and effectiveness would be almost fatally limited if a country of such industrial importance as the United States did not belong ; on the other hand, if the scheme was so weakened as to impose no obligation on States to give effect to or even to bring before their legislative authorities the decisions of the international labour conference, it was clear that its work would tend to be confined to the mere passage of resolutions instead of resulting in the promotion of social reforms with the sanction of law behind them."

What has been said, and the passage quoted, will serve to show both the influence of the United States on the proceedings and the great importance—exaggerated, as subsequent events have shown —attached to the participation of the United States. In the upshot the constitution of the International Labour Organization was framed on the basis of a British draft, modified by American and French amendments. The Dominions, it may be remarked, adopted a view on most points more in accord with that of the Americans than that of the British delegation.

PART XIII. OF THE VERSAILLES TREATY

ARTICLE 427

The constitution was incorporated in Part XIII., Articles 387-427 [1] of the Versailles Treaty. Under the pressure of public, and particularly labour, opinion the constitution includes not only provisions for the International Labour Organization proper but also, in Article 427, an outline of the main tasks with which the Organization should deal. This article, entitled " General Principles," and popularly known as " The Labour Charter," declares that :

" The High Contracting Parties, recognizing that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I. and associated with that of the League of Nations.

" They recognize that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding, as they do, that labour should not be regarded merely [2] as an article of commerce, they think

[1] See Annex B.

[2] The word " merely " was added to the original draft in Mr Gompers' absence in the States, and violently objected to by him. *Cf.* Paul Périgord, *The International Labour Organization.*

that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

"Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:

"*First*: The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

"*Second*: The right of association for all lawful purposes by the employed as well as by the employers.

"*Third*: The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

"*Fourth*: The adoption of an eight-hours' day or forty-eight-hours' week as the standard to be aimed at where it has not already been attained.

"*Fifth*: The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

"*Sixth*: The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

"*Seventh*: The principle that men and women should receive equal remuneration for work of equal value.

"*Eighth*: The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

"*Ninth*: Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

"Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world."

The insertion of this article was strongly opposed at the time by Mr Barnes, on the ground that a mere statement of principles was of no practical importance, and that what really mattered was to set up an organization which, in the course of its own development, would create its own traditions and principles and make clear the lines on which it proposed to tackle the problems for whose solution it had been established. Mr G. A. Johnston, a high official in the International Labour Office, in his book, *International Social Progress*, remarks that:

"The years that have passed since these discussions in the Commission on International Labour Legislation have proved the soundness of the contention of the British Delegation. For no single practical measure has resulted from, or been influenced by, the fact that these nine general principles are incorporated in the Treaty. Some minds may perhaps experience a sentiment of theoretical satisfaction in contemplating these nine principles, but in practice they have lessened the hours of work of no child, lightened the lot of no

woman and assured to no man an improvement in the conditions of his working life."

On the other hand, Mr Barnes himself, discussing the work of the Peace Conference Commission and the nine points it adopted and incorporated in Article 427, writes :

" I attached but little importance to them, but it is only fair to say that those who were of a contrary opinion have been to some extent justified in the result, for the affirmations have been useful reminders sometimes of the principles to which Governments are committed." [1]

At bottom, the Peace Conference conflict was an illustration of the Anglo-Saxon preference for tackling each question on its merits and letting general principles arise from the accumulation of special cases, and the Latin desire to have general principles laid down in advance. To the Anglo-Saxon what matters are the institutions, while the French mind attaches more importance to a statement of their purpose.

THE PREAMBLE

It was, however, the preamble to Part XIII. of the Versailles Treaty which defined the task of the International Labour Organization with the greatest authority,[2] in the following terms :

" Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice :

" And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled ; and an improvement of those conditions is urgently required ; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures :

" Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries :

" The HIGH CONTRACTING PARTIES, moved by sentiments of justice and humanity, as well as by the desire to secure the permanent peace of the world, agree to the following."

[Then follow the forty articles of the constitution of the International Labour Organization.]

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[1] *History of the International Labour Organization*, by G. N. Barnes.

[2] For the International Court has held that the definition of the competence of the Organization was contained in the preamble, not in Article 427.

NATURE AND COMPETENCE OF THE INTERNATIONAL LABOUR ORGANIZATION

NATURE

(a) *Heir to the International Association for Labour Legislation*

The Organization that emerged from the Peace Conference was quite obviously a further step in the development whose previous highest point had been the setting up of the International Association for Labour Legislation. The International Labour Organization, in fact, from one point of view does little more than combine the alternating " technical " and " diplomatic " conferences held at the instance of the International Association into a system of " mixed " conferences composed of government representatives and technicians together, as well as provide for the representation of employers, whose absence was one of the weaknesses of the International Association, and make the obligations and representation of governments formal and binding—thus supplying another deficiency of the International Association. So well recognized is this rôle of the International Labour Organization as heir to the old International Labour Association that the latter has been dissolved and the personnel and library of its office at Bâle formed the nucleus of the office of the new organization at Geneva.

(b) *A Response to the Demands of Labour*

But, equally, the International Labour Organization is a response to the revolutionary demands of labour in 1918-1919 and a recognition of the enormous importance of organized labour in society, as revealed under the strain of war. This aspect of the matter is shown both in the part played by labour during the war and at the Peace Conference in the constitution of the International Labour Organization, and by the right of direct representation and voting in the Conference given to labour. The innovation by which governments are bound to submit to their legislative authorities draft treaties voted by the International Labour Conference is a compromise with the labour demand that conventions, when duly voted, should become *ipso facto* binding, although it is also partly due to the general desire to link the organization as closely with the national life of the States Members as possible.

(c) *A Part of the General System of Co-operation and Conciliation*

Finally, the International Labour Organization was thought of by its founders as one branch of the great effort at world peace

and world reconstruction to which all civilized nations were to pledge themselves after the Great War. This view is brought out clearly by the close connexion established between the League of Nations and its International Labour Organization and the mention of the latter's object in Article XXIII., Paragraph (*a*), of the Covenant.

It follows from what has been said that the International Labour Organization partakes of the nature of the League of Nations—is, indeed, an autonomously organized part of the latter. The nature of the League has already been described [1] and will be fully discussed below.[2] The relationship of the League and the Labour Organization has already been touched upon [3] and is discussed in detail further in this chapter.[4]

SOURCES AND EXTENT OF COMPETENCE

The competence of the Labour Organization is to be deduced from the forty articles of its constitution, particularly in the preamble and the "Labour Charter," as well as in Article XXIII., Paragraph (*a*), of the Covenant. It has further been defined by advisory opinions of the Court and by the practice of the Organization during the first eight years of its existence. All these sources serve to establish the fact that the Organization is competent to deal with all classes of labour and all questions of social reform that may become the subject of conventions between states.

It can, within these wide limits, deal with every kind of worker —*i.e.* with not only industrial but also agricultural labour, not only manual workers but also "intellectuals" (black-coated workers, the "salariat"—clerks, teachers, musicians, engineers, etc.), not only resident workers but emigrants and immigrants, —and may even frame and propose "labour legislation which, in order to protect certain classes of workers, also regulates incidentally the same work when performed by the employer himself." [5]

It can deal also with any matter within these limits affecting the social or economic life of workers, but cannot concern itself with questions of production except in so far as the technique of production incidentally affects conditions of labour (safety, piece-rates, working hours, etc.), or production itself is relevant to the consideration of such problems as, *e.g.*, unemployment.

The position as regards the competence of the Organization,

[1] See above, pp. 60-61.
[2] See pp. 343-344, 482-486.
[3] See pp. 207-208.
[4] See pp. 231-233.
[5] At the request of the employers, who contested the competence of the Organization to suggest regulating night work in bakeries, the Court was asked to give an advisory opinion in the terms quoted, and replied in the affirmative.

and particularly the rôle of the Court in defining it, has been put admirably as follows :

" The opinions of the Permanent Court of International Justice are at once consolidating and defining the power of the International Labour Office. . . . For the Court holds that the texts determining the competence of the International Labour Office are ' comprehensive ' and must be interpreted in the widest possible sense. Now this has been the point at issue in all the controversies that have arisen over the competence of the International Labour Office, one party holding that no question not mentioned in the preamble to Part XIII. of the Treaty and Article 427 comes within its province. It may, therefore, be hoped that this opinion will settle more than the question that has elicited it. This wide discretion is justified, as the Court points out, by the very narrow limit of the executive powers of the International Labour Office. For it has no power to force a convention on any State that refuses to accept it. . . . The competence of the International Labour Office consists in proposing measures, not in imposing them. This is, of course, much the most satisfactory situation. It is undesirable that the International Labour Office should have a political power which would be sharply resented. If it were a legislating body its authority would not be accepted, as the world is constituted at present. It is not less desirable that it should be able to use its moral power and its opportunities of discussion and leadership over a wide area. For undoubtedly the effect of its work will be to build up first a body of opinion, then a body of custom, and finally a body of law."[1]

(a) *Agricultural Labour*

The right of the Organization to deal with questions of agricultural labour was contested by the French Government in 1921 after various organizations, notably the Swiss Peasants' Union, had protested against the inclusion of such questions on the agenda of the Conference of the Organization. The Council of the League, at the request of the French Government, asked the Permanent Court for an opinion. The Court formally affirmed the competence of the Organization on such questions in a closely reasoned opinion that served to consolidate and define the powers and duties of the International Labour Organization.

(b) *Intellectual Workers*

The competence of the Organization as regards intellectual workers has never been authoritatively questioned, although often adversely criticized by certain elements of public opinion. In pursuance of its view, the Organization has established relations with the League Committee on Intellectual Co-operation (through the presence at the sessions of the Committee of an official of the International Labour Office), and has undertaken an inquiry into the economic conditions of intellectual workers in some of the

[1] *Manchester Guardian*, November 2, 1926. The word " Office " here is used throughout as referring to the whole Organization.

new countries, where their economic circumstances in the years immediately after the war were deplorable.

In its session of March to April 1927, the Governing Body of the International Labour Organization, at the initiative of the Italian Government, decided to appoint a special committee to keep in touch with the International Confederation of Intellectual Workers that had been formed in 1923. This organization comprises about 2,000,000 intellectual workers from ten countries.[1]

(c) *Emigrants and Immigrants*

The question of its competence in matters of emigration and immigration is settled by the text of the preamble and the fact that emigrants and immigrants must be regarded not merely as travellers—which was the contention of the opponents of the Organization's competence—but as travellers leaving or entering a country for the purpose of procuring employment. This was equivalent to saying that the status of immigrants was that of temporarily unemployed workers, which brought them within the scope of the Organization's functions. Nevertheless there has been some tendency to look askance at the rôle of the Organization in such questions, and the Italian Government even went so far as to hold an international migration conference in 1923 that was looked upon as in some sense a challenge to the competence of the Organization.

It is true that, so far as words went, any such intention was expressly disavowed by the Italian Government, and that execution of the Conference's decisions was referred to the League, but the fact remains that some such conference would have been summoned by the Organization if it had not been for the action of the Italian Government, and that the latter declined the help of the Organization, either in preparing the conference or discharging the secretarial duties it necessitated. As the results of the conference were practically *nil*, this, perhaps, is not a matter of such importance as it was felt to be at the time by ardent champions of the International Labour Organization. But it is a characteristic instance of a government member of the League thinking it was more glorious to figure as the initiator of a conference held in its own capital than to pursue its object through League machinery and take its stand squarely on League obligations. Yet the latter

[1] The committee is composed of three members appointed by the Governing Body, three by the International Confederation of Intellectual Workers, two by the Committee on Intellectual Co-operation and two by the International Association of Journalists. For an account of the functions of this committee see the chapter in Volume II. on "The Record of the International Labour Organization."

method raises fewer psychological difficulties and gives better guarantees of a conference being well prepared, smoothly run, and its decisions "followed up" and kept in the main current of continuous international co-operation.

(d) *Production and Labour*

The question of production was raised by the French Government in an attempt to offset the defeat incurred in contesting the competence of the Organization to deal with agricultural labour. In the form given the question by the French Government, and transmitted by the Council to the Permanent Court as a request for an advisory opinion, the competence of the Organization was contested over production in agriculture, and one of the practical considerations advanced was the danger of overlapping with the functions of the International Institute of Agriculture at Rome. The latter fear was in any case superfluous, since the Organization had proposed to set up a committee in which the Institute of Agriculture should be represented and was ready to take any other measure that might be suggested and prove feasible to co-ordinate its work with that of the Institute. The purpose of the French Government's request for an advisory opinion was to secure an answer which it could use to prevent the Organization dealing with agricultural questions almost as effectively as though the Court's first advisory opinion had never been given. The Court, however, avoided the trap by returning an answer which applied to the whole question of production, as distinct from the economic and social conditions of labour, and gave the answer already described.[1]

ORGANIZATION AND FUNCTIONS

Organization

The International Labour Organization has, therefore, now been recognized as the instrument by which the States Members of the League co-operate over the whole immense field of social peace and justice. They do so through a system of conferences and committees organized on lines resembling, though distinct from, those of the parallel machinery of the League proper.

The International Labour Organization consists of a Conference in which all the members are represented, corresponding to the Assembly, a Governing Body composed of certain permanent members and a contingent of elected members, corresponding to the Council, and an International Labour Office, corresponding

[1] See above, p. 221.

to the League Secretariat. The last-named is the counterpart of its League brother. But the Conference is neither a conference of government representatives—as is the Assembly—nor a parliament nor a committee of experts, but a body unlike and yet similar to all three.

In the Conference each State Member of the Organization is represented by four delegates, two appointed direct by the government, one nominated by the government in consultation with the most representative labour organizations, and the other similarly nominated from the most representative employers' organizations. That is, in the Conference not only governments (generally ministries of labour) are represented, but employers' and labour organizations. Moreover, each of the four delegates of a country has a separate vote, so that the Conference consists of an employers' group, a labour group and, between the two, a group of government representatives.

The Governing Body is composed of the representatives of the eight states of chief industrial importance, of four delegates elected by the group of government delegates at the Conference (exclusive of the delegates of the eight states of chief industrial importance), of six workers' delegates elected by the workers' group, and six employers' delegates elected by the employers' group. The Conference meets at least once a year (usually in May to June), the Governing Body as occasion may demand, and usually five times a year.

FUNCTIONS

The functions of the Organization may be grouped broadly into two classes—namely, the drafting of international labour conventions and the gathering of information on labour questions. Article 396 declares that "the functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions and the conduct of such special investigations as may be ordered by the Conference."

In view of the explicit terms of its constitution the critics of the International Labour Organization have not been able to deny that its functions do, in fact, include both the drafting of conventions and the collecting of information, but during the first few years of its existence there were two schools of thought equally

fierce in their denunciation of the Office, but diametrically opposite in their views of what it should not do; the one school said it should limit itself to being a bureau of information and statistics, but should be deprived of the power of drafting conventions and dealing with matters that were within the province of national sovereignty, while the other was equally emphatic in its view that the collection of information by the Office was a sheer waste of time, whatever might or might not be said for its activity in drafting conventions. In truth, of course, the gathering of information without the drafting of conventions would be an academic activity, whereas the drafting of conventions would not be practically possible unless information were previously collected and digested.

PROVISIONS FOR SETTLING DISPUTES (ARTICLES 409-420)

SUBMISSION FOR RATIFICATION

The work of the Organization is based on the principle that governments are bound to submit conventions duly voted by the Conference to their competent authority for ratification within a year, or at most eighteen months. The original draft of the constitution made it clear that by "competent authorities" were meant "legislative authorities"—that is, Parliaments. The ambiguity in the final text was introduced owing to the difficulties of countries with federal governments (*i.e.* the United States). In most countries with Parliamentary governments the authority is, however, in practice, the legislature. This is the case also in Great Britain, but the British Government have contended that constitutionally the Privy Council is the proper authority to which alone they are legally bound to submit conventions, although they have hitherto been willing in practice to refer them to Parliament as well. The result of this attitude has been that while in fact fulfilling their legal obligations scrupulously they have left themselves open to the accusation, whether made in good faith or bad, of reserving the right to dodge them if it should prove convenient.[1]

There was a struggle of a different nature with the French Government, which was horrified at the diplomatic innovation by which a treaty was ratified without ever having been signed. It contended that it was not possible to submit to the French Diet

[1] The implied right of the government to conclude treaties without reference to Parliament also has a bearing on the question of the proper conduct of British foreign policy, and is discussed from this angle in Volume III.

a mere draft convention, and proposed that it should sign the conventions passed at the First or Washington Conference of the Organization, and as soon as another state had done likewise submit them to its legislature. It proposed, at the same time, the framing of a protocol open for signature or adhesion to the other contracting states.

This proposal was made to the Secretary-General of the League, who requested the comments of the Director of the Labour Office. The latter, although a Frenchman, on this, as on other occasions, had not the slightest hesitation in openly and strongly opposing the view of the Government of his country; the whole object of Article 405 of the constitution of the Labour Organization, he argued, was to do away with the formality of signature by obliging states to present to their ratifying authorities all draft conventions adopted by a two-thirds vote of the International Labour Conference, whether a delegate of the state concerned had voted for the convention or not. If the French Government wished to adopt the procedure of signing treaties it could do so, although it would seem a curious proceeding to sign treaties against which its delegates might have voted. But other states should not also be required to adopt this procedure, and it would have the undesirable effect of putting governmental and non-governmental delegates of the Conference on a different footing. This view was adopted by the Secretary-General of the League.

The French Government obtained the agreement of the Belgian Government to the procedure of signing draft conventions, which were submitted to the Parliaments of these countries after signature (*i.e.* the texts of the Labour Conference draft conventions were reproduced in conventions signed between these two countries and submitted to Parliament). After some years this clumsy and complicated procedure was, however, abandoned, and the French Government conformed to the practice of other members of the League. The truth is that, whereas signature previously marked a definite stage in the negotiation of an international instrument, in the days when plenipotentiaries acted largely on their own initiative, owing to the slowness and difficulty of communications with their governments, and ratification did not necessarily follow, it is now a purely formal proceeding. At every step in the negotiations government delegates are in touch by wire or telephone with their governments, and before they sign an important document its full text has been wired home and considered by their governments. Nevertheless, the formality of signature generally involves

additional delay and complications, the opening of a protocol of signature, followed after a period of some months by "adhesions" or "accessions." All this international red tape is done away with by the new procedure for ratification of labour conventions, and the experiment can only be applauded for its intention and watched with interest for its effect.[1]

FAILURE TO RATIFY

If the authority competent to ratify conventions refuses to do so the matter ends there, and there is no further obligation upon the government concerned. This, at least, is the constitutional theory. In practice, however, a government whose delegates vote for a convention thereby in the eyes of its public opinion frequently incurs a moral obligation to ratify, and failure to do so may get it into trouble with certain elements of its public opinion. The Governing Body, too, have developed a habit of investigating what progress is being made on draft conventions, including the reasons why governments have not ratified, and although there is no legal obligation to do so, government representatives frequently give explanations justifying their policy in such matters.[2]

FAILURE TO SUBMIT FOR RATIFICATION

If a government fails to submit a draft convention within the proper time another member may refer the matter to the Permanent Court, and by Article 417 of the constitution the member proceeded against undertakes to abide by the decision of the Court. This is part of the cumulative and progressive procedure devised for putting pressure on states to carry out their obligations that is described below.

OBLIGATIONS RESULTING FROM RATIFICATION

When a government ratifies a convention it immediately incurs a series of obligations designed to secure effective observance of all conventions ratified. An employers' or workers' association has the right to allege that a member is failing in some respect to observe a convention it has ratified, and the Governing Body may communicate this representation to the government concerned, and, failing to receive a satisfactory reply within a reasonable time, may publish the representation and the reply, if any. That is, in this case the only pressure brought to bear is that of public opinion.

A more serious case is that of complaint by one government as to the failure of another to observe a convention which both have

[1] See below, p. 462.

[2] This point is further discussed below, on pp. 238 and 257, and in the chapter on "The Record of the International Labour Organization" in Volume II.

ratified. In this case the Governing Body may refer such a complaint to a commission of inquiry either before or after obtaining the views of the accused government on the complaint. Such procedure may be instituted by the Governing Body on its own initiative or on receipt of a complaint from a delegate to the Conference. The commission of inquiry is composed of three persons nominated by the Secretary-General of the League at the request of the Governing Body from a panel composed of an employers' representative, a workers' representative and "a person of independent standing," from each of the members of the Organization. None of these three persons may be a person nominated to the panel by any member directly concerned in the complaint.

In case the commission of inquiry is appointed, the members agree by Article 413 to place at its disposal all relevant information. The commission considers the complaint and information and publishes a report and recommendations, as well as indicates all the measures of an economic character which may be adopted against the defaulting government. This report is communicated by the Secretary-General of the League to the governments concerned, and published. The governments must report within a month whether they propose to accept the recommendations of the report, and if not, whether they will refer the complaint to the Permanent Court. For this purpose the Court sits in a special chamber of five,[1] with four labour assessors chosen from a panel composed of two persons nominated by each member of the League and an equal number, half of employers' and half of workers' delegates, chosen by the Governing Body from the panel just mentioned. When a complaint of non-observance of a ratified convention comes before the Permanent Court the latter's decision is final. The Court may affirm, vary or reverse any of the findings or recommendations of the commission of inquiry, if any, and indicate the measures, if any, of an economic character which it considers to be appropriate against a defaulting government. The other members may then carry out these measures against a state failing to comply with the report of the commission of inquiry or the decision of the Court. Provision is made for the cessation of such measures after the defaulting government has satisfied the Governing Body that it has complied with the report of the Commission or the decision of the Court.

It is doubtful whether a case will ever occur of this procedure being applied to the end, but it has been very carefully devised in

[1] See below, pp. 375-376.

a series of graduated steps, beginning with nothing but a discussion in the Governing Body, followed, if necessary, by an appeal to public opinion, then increasing the pressure of such opinion, then proceeding to use the threat and, finally, the actual operation of economic coercion to secure compliance.

So far public opinion has proved exceedingly efficient in inducing governments to live up to conventions once ratified, and no suggestion has been made of resorting to more stringent measures. The only case, indeed, in which the system for putting pressure on governments has ever been invoked was an appeal by the Japanese Sailors' Union against their government, alleging that the latter was not applying the Genoa Convention of 1920, which it had ratified, concerning employment offices for sailors. On this occasion the Director of the Labour Office informally communicated the appeal for comment to the representative of the Japanese Government on the Governing Body, who was able before the Governing Body met to announce the reply of his government, which was distributed to the members of the Governing Body. After discussion the Governing Body was satisfied that the Japanese Government were, in fact, carrying out the convention, and that the appeal was not justified, and therefore dropped the matter and so never formally took even the first step of officially communicating the representation of the Workers' Association to the government concerned. The labour conventions that have been ratified are relatively so few and so recent, and, it may be added, for the most part of such secondary importance, that the question of how faithfully they are being observed can hardly be expected to arise. As the controversies over the way the eight-hour convention is being applied by countries that have ratified it prove, however, this will be a question of growing importance as the number and importance of conventions increases, and as, with time and the change of conditions, it becomes an increasingly complex matter to decide just what constitutes effective application.

Hitherto governments, as the discussion of the record of the International Labour Organization in Volume II. will show, have been disappointingly slow to ratify conventions (although, judging by pre-war standards, the rate of ratification has been exceedingly rapid).[1] The position may however change, if the power of organized labour and its pressure on governments increase, and public opinion becomes better informed and more sensitive, so that social reform plays a more important part in the

[1] See below, pp. 349-350, 461-465.

life of states, and the importance of co-ordinating such reforms internationally becomes more clearly realized.

RELATIONS WITH THE LEAGUE

General

The general nature of the Organization's relationship to the League has already been described,[1] but to gain an exact idea it is necessary to study the numerous references to the League made throughout the constitution of the Organization; in the first place the preamble and Article 387 declare that " whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice," the High Contracting Parties have set up a permanent Organization: " the original members of the League of Nations shall be the original members of this Organization, and hereafter membership of the League of Nations shall carry with it membership of the said Organization."

The general principles laid down in Article 427 state that " the High Contracting Parties, recognizing that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I and associated with that of the League of Nations." This article concludes: " Without claiming that these methods and principles are either complete or final the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations: and that if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world."

Organization and Finance

Article 392 states that " the International Labour Office shall be established at the seat of the League of Nations as part of the organization of the League."

In the words of Article 398 " the International Labour Office shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it may be given."

" Office " in the sense of these articles refers, it should be remembered, to the whole Organization, as is made clear by the text of subsequent articles which bring the League into direct relation with various parts of the Organization's machinery and

[1] See above, pp. 207-208, 221.

working. The Secretary-General of the League, in fact, in addition to being the Secretary-General of the Council and Assembly, and the head of the Secretariat, has certain duties and responsibilities with regard to the International Labour Organization. The latter is considered throughout its constitution as an autonomous but integral part of the organized interstate society known as the League of Nations.

Article 391 declares that " the meetings of the Conference shall be held at the seat of the League of Nations."

Article 393, describing the constitution of the Governing Body, says that " any question as to which are the members of chief industrial importance shall be decided by the Council of the League of Nations."

Article 399 stipulates that the expenses of " the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary-General of the League of Nations out of the general funds of the League. The Director shall be responsible to the Secretary-General of the League for the proper expenditure of all moneys paid to him in pursuance of this Article."

In other words, the Director of the Labour Office, according to the constitution, is really responsible to the Secretary-General of the League for the day-to-day disbursements and accounting generally of his office. In fact, the Secretary-General has delegated this authority to the Director once for all, and one-third of the amounts received into the League budget are automatically handed over to the financial administration of the Labour Office, which thereafter deals directly with the League auditors, Supervisory Commission and the Fourth Committee of the Assembly in the manner described below.[1]

PROCEDURE

When it comes to procedure the constitution of the Organization is no less explicit. By Article 405 copies of recommendations or draft conventions voted by the Conference are to be deposited with the Secretary-General of the League, who communicates certified copies to each of the members. In the case of a recommendation the members will inform the Secretary-General of the action taken. " In the case of a draft convention a member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General, and will take

[1] See pp. 435-439.

such action as may be necessary to make effective the provisions of such conventions." By Article 406 "any convention so ratified shall be registered by the Secretary-General of the League of Nations," while the next article stipulates that any convention failing to secure a two-thirds vote at the Conference, but nevertheless agreed to between some of the members of the Organization, "shall be communicated by the governments concerned to the Secretary-General of the League of Nations, who shall register it."

The procedure already described for investigating failures by members to live up to their obligations and eventually to exert pressure on such members provides for the co-operation of the Secretary-General in setting up a commission of inquiry and designating its president, for communicating the report of the commission to the governments concerned, for the subsequent publication of the report, for a reply by these governments to the Secretary-General, and for the summoning of a defaulting member before the Permanent Court by another member, as well as the indicating by the Court of measures of an economic character that might be taken against the defaulting government.

CONSTITUTIONAL AMENDMENTS AND INTERPRETATIONS

Amendment of the constitution of the Organization is effected by a two-thirds vote of the Conference, subsequently ratified by "the States whose representatives compose the Council of the League of Nations and by three-fourths of the members." [1] By Article 423 any dispute regarding the interpretation of the constitution of the Organization or of any subsequent convention concluded by its members in pursuance of the provisions of this constitution is to be referred for decision to the Permanent Court.

MEMBERSHIP

IDENTICAL FOR LEAGUE AND LABOUR ORGANIZATION IN CONSTITUTION

The framers of the constitution of the International Labour Organization evidently contemplated a world in which all nations should be members of the League and all members of the League automatically members of the International Labour Organization. There is, therefore, no provision for separate membership of the Organization and no provision for leaving the Organization except by ceasing to be a member of the League.

[1] See below, pp. 235-236.

San Salvador at one time refused to pay the part of her League contribution that was assigned to the Labour Organization, on the ground that she had never been a party to the Versailles Treaty and therefore, while subscribing to the Covenant, was free to refuse adhesion to the constitution of the Labour Organization. This plea, however, was disallowed, and San Salvador yielded to the extent of paying her full contribution, while maintaining her view as to the legal possibility of League membership only.

Possibility of joining the International Labour Organization while remaining outside the League

The German Government secured a promise by the Supreme Council at the time of the Peace Conference that Germany should be admitted to the International Labour Organization immediately. The first Conference of the Organization, held at Washington in 1919, accordingly admitted Germany, after long debates, on a legal interpretation which contended that this promise of the Supreme Council was part of the conditions accompanying the coming into force of the Peace Treaty that contained the constitution of the Labour Organization. Finland also was admitted to the Labour Organization after further prolonged debates, apparently on the view that she was in this way anticipating her imminent admission into the League, and so enjoyed the status of a *de facto* member pending her admission as a member by full right.

The legal position is not at all clear, since the prolonged lack of universality of the League was never contemplated by the framers of the constitution of the Labour Organization any more than by those of the Covenant. But as a matter of political fact it is not very probable that any of the states still outside the League would be willing to enter the Labour Organization before becoming members of the League, while if any state did desire to do so there is no doubt that the juridical technicalities could be strained sufficiently to accommodate its case.

Impossibility of leaving the International Labour Organization while remaining in the League

But if, in certain rather improbable circumstances, it might be desirable to establish the doctrine that a state may become a member of the Labour Organization without entering the League, it is even more desirable to emphasize the opposite doctrine, clearly laid down in Article 387 of the constitution of the Organization, that a member of the League cannot cease to be a member of the Labour Organization. If the plea denied to San Salvador were upheld in favour of, for instance, Italy—and Fascist Italy is far

from being enamoured of the International Labour Organization —the result might be to start a most disastrous movement of socially reactionary states away from the Labour Organization, with consequent legal confusion, financial difficulties and impairment of the moral prestige of the League and its Labour Organization, that might have the most serious results for the whole great adventure in world unity to which mankind has set its hand.

POSSIBILITY OF REMAINING IN THE INTERNATIONAL LABOUR ORGANIZATION WHILE LEAVING THE LEAGUE

A third case, also never contemplated by the founders of the League and the Labour Organization, is whether a state that leaves the former can remain a member of the latter. This problem attracted attention when Spain and Brazil made known their desire, while leaving the League, to remain in the International Labour Organization. Spain has since returned to the League, but as regards Brazil the problem remains. Here, too, a situation never contemplated by the framers of Part XIII. of the Peace Treaty can be interpreted so as to be legally compatible with its provisions. But views differ as to the political desirability of such an interpretation. It is urged that international co-operation should be encouraged and Brazil's return to the League made easier, and objected that a state leaving the League should not be allowed to pick and choose, lest its example corrupt others: Brazil must either come in or get out.

MEMBERSHIP IN RELATION TO THE PROCEDURE FOR AMENDMENTS

The failure to make any distinction between membership of the Organization and membership of the League—brought out most clearly in the last paragraph of Article 427 quoted above,[1] but apparent throughout the constitution of the Organization—has made it difficult to interpret the meaning of Article 422, which governs the procedure for amendments to the constitution. The current interpretation is that when this article speaks of amendments being ratified " by the states whose representatives compose the Council of the League of Nations and by three-fourths of the members " the word " members " refers to members of the Organization and not members of the League. It is true that Article XXVI. of the Covenant, providing for the amendment of that instrument, states that amendments shall take effect when ratified by the States Members of the Council and a majority of the Assembly, and further true that, since the membership of the League is now the same as that of the Labour Organization, and likely to remain

[1] See p. 218.

so, the point has only an academic importance. Nevertheless it seems difficult to admit that " members," when mentioned in Article 422 in the same breath as the Council of the League, can refer to anything but the members of the League, although it must be added that the opposite view is held by good legal authorities, including those of the International Labour Office. The interpretation of " members " in Article 422, as referring to the League, would be in conformity with the view of the relationship between the League and its Labour Organization that is expressed throughout the latter's constitution. The fact that an amendment is voted by a two-thirds majority of a body in which labour and employers between them have a number of votes equal to that of the government representatives (*i.e.* the General Conference) is enough to account for the greater proportion of ratifications needed for amendments to the constitution as contrasted with amendments to the Covenant.

THE GENERAL CONFERENCE

Composition and Meetings

The General Conference of representatives of the members is, according to Article 389 of the constitution of the International Labour Organization, to be held " from time to time as occasion may require and at least once in every year. It shall be composed of four representatives of each of the members, of whom two shall be government delegates and the two others shall be delegates representing respectively the employers and workpeople of each of the members. Each delegate can be accompanied by advisers, who shall not exceed two in number, for each item on the agenda of the meeting.[1] When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman. The members undertake to nominate non-government delegates and advisers chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be in their respective countries. . . . Credentials of delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the delegates present, refuse to admit any delegate or adviser whom it deems not to have been nominated in accordance with this Article."

The following article provides that " every delegate shall be entitled to vote individually on all matters which are taken into

[1] See below, pp. 239-240.

consideration by the Conference. If one of the members fails to nominate one of the non-government delegates whom it is entitled to nominate, the other non-government delegate shall be allowed to sit and speak at the Conference but not to vote. If, in accordance with Article 389, the Conference refuses admission to a delegate of one of the members, the provisions of the present Article shall apply as if that delegate had not been nominated."

Article 391 declares that the Conference shall meet at the seat of the League or at such other place as may be decided at the previous meeting by a two-thirds vote of the delegates present.

The composition of the Conference is an ingenious attempt to combine the chief advantages of national parliaments and international conferences of government representatives. In the view of some critics the result has been to secure the disadvantages of both with the advantages of neither: the Conference is not sufficiently representative of all sections of public opinion to have the moral authority of a parliament, while not sufficiently "official" to make the governments feel responsible for the outcome of its deliberations. It seems more just, however, to say that the Conference does, in fact, in a large measure secure the advantages that the framers of its constitution intended; by direct representation of labour and employers and by the institution of the individual vote and of the adoption of draft conventions by a two-thirds majority it has secured the fullest and freest discussion and given organized labour, and even to some extent employers, a sense of real participation in the work of the Organization, while by allowing the governments to appoint two delegates of their own, to "balance" the employers' and labour delegates, they have given them a sufficiently large share in the proceedings and decisions of the Conference to commit them morally.

THE GOVERNMENT DELEGATES

At the Peace Conference the British proposal originally provided for only one government delegate, who should have two votes when it came to taking final decisions, on the ground that otherwise labour would not feel it had sufficient relative representation. The French and Italian governments went even further, and suggested only one government delegate, with one vote, on every delegation. The plural vote was, however, objected to on democratic grounds, and it was further urged that, unless governments had two delegates, they would not feel sufficiently committed by the decisions of the Conference: the labour objection was met by pointing out that in practice (as has, indeed, proved

the case) the government delegates were quite as likely to vote with the labour group as with the employers. For the latter reason it was, indeed, a positive advantage to labour to have two government delegates, for otherwise the rule of a two-thirds majority might give the employers' group power to prevent any draft convention whatever being voted. There is still a certain amount of formal opposition by the labour delegates to the " double " representation of governments, but the compromise has met with pretty general acquiescence, the more so as in the Conference committees, except the Selection Committee, there is only one government delegate for every labour and employers' representative.

The government delegates are generally officials of the ministries of labour or home offices, or both, of the countries concerned, but the Conference is attended occasionally by Ministers of Labour, and this might with advantage be made the practice more frequently. There is some difference of view as to the extent to which government delegates should be bound by instructions. The general practice is to steer midway between the extreme view that delegates should be left entirely free to act as international labour experts, or that they should be bound by detailed instructions on every point in the agenda. Government delegates are as a rule guided by certain general instructions which they have had a hand in framing, and that leaves them a good deal of initiative on details. Their vote is taken to commit their governments morally. The tendency is indeed to think that a government whose delegates have voted for a draft convention is bound in honour to ratify that convention.[1] Thus Sir Thomas Legge, the Chief Medical Inspector of the Home Office, resigned his office in 1927, declaring publicly that he voted for the White Lead Convention at the International Labour Conference of 1921 as a delegate of the British Government, and did so in good faith: he therefore considered it his duty to resign as a protest at the failure of the Government to ratify this Convention.[2]

There is little tendency on the part of government delegates to form a group, except in the sense that their views are generally intermediate between those of the employers and workers, who do form very distinct and sharply defined groups. On the whole, the government delegates may be said to have voted more frequently with the labour group, or rather for measures more nearly

[1] See above, p. 228, and the account of the controversies over the non-ratification of the white lead and eight hours conventions in Volume II.

[2] See the chapter in Volume II. on " The Record of the International Labour Organization " for the extent to which conventions have been ratified.

in accordance with the views of the labour group, than they have with the employers. This, however, varies, not only with the country under consideration, but with the attitude towards the relations between labour and capital of the government of the country at any given time. And it should not be forgotten that group-voting is confined to the committee stage of discussions and to secondary questions. Draft conventions are adopted by very large majorities—far more than the two-thirds majority constitutionally required.[1]

THE WORKERS' REPRESENTATIVES

(a) *The Group System*

The labour and employers' delegates not only constitute groups in fact, but are expected to do so by the constitution of the Organization, which provides that the Governing Body shall be composed of persons representing the governments and elected by the delegates to the Conference "representing the employers" and "representing the workers." The rules of procedure of the Conference also speak of "the government, employers' and workers' groups" in connexion with the nomination of vice-presidents of the Conference, the composition of committees, etc.

The constitution provides that if a government sends only an employers' or workers' representative he is not allowed to vote. This is intended to ensure a well-balanced delegation, but has not prevented a good many governments simply sending government delegations and no employers' or workers' representatives. There is nothing in the constitution to cope with this difficulty, which is due in some cases at least to the absence of any properly organized employers' or workers' associations, but the desirability of securing representative delegations is strongly emphasized at every Conference and the question of incomplete delegations is being specially studied. Each delegate may have up to two technical advisers for each item on the agenda, and "when questions

[1] Twenty-five draft conventions were adopted by the Conference between 1919 and 1928. The voting on them was as follows:

	For	*Abstentions*	*Against*		*For*	*Abstentions*	*Against*		*For*	*Abstentions*	*Against*		*For*	*Abstentions*	*Against*		*For*	*Abstentions*	*Against*
1.	82	0	2	6.	93	0	0	11.	72	2	5	16.	96	2	0	21.	72	0	35
2.	88	0	4	7.	70	2	0	12.	81	2	13	17.	83	0	8	22.	95	0	0
3.	67	0	10	8.	70	0	0	13.	90	1	0	18.	89	0	6	23.	75	0	22
4.	94	0	1	9.	73	2	7	14.	73	2	24	19.	125	0	0	24.	97	0	9
5.	92	0	3	10.	85	0	1	15.	100	2	0	20.	81	0	26	25.	85	0	9

specially affecting women are discussed at the Conference, at least one of the technical advisers must be a woman." Technical advisers have not the right to vote and are allowed to speak only at the request of their delegates, and on the special authorization of the President of the Conference. A delegate may, however, when absent from a meeting, appoint one of his advisers as his substitute, and the latter then acts, speaks and votes in his place. Advisers may sit as full members of the Conference committees.

It is the custom to choose advisers, at least among the labour, and sometimes the employers' group, rather from the point of view of the different labour or employers' organizations that wish to be represented on the delegation than because of their individual expert knowledge.

(b) *The Attitude of Labour*

At first organized labour was inclined to be suspicious of the International Labour Organization and considered it too much tainted by officialism and the employer element. This was a reflection of the power and intransigence of labour immediately after the war—or rather of the intransigence of labour due to its power during the war, for it soon became apparent that the aftermath of war involved, as usual, a period of political reaction and economic depression which made the position of labour exceedingly difficult and precarious. Gradually, however, the International Labour Organization has come to be better understood by organized labour and its possibilities as a really effective instrument for altering the status of labour in modern society appreciated. The fact, however, that it attempts to bring employers and workers together, and to make both co-operate with governments, is still considered wrong in principle by ardent advocates of the Marxian doctrine of class war.

(c) *The International Labour Office, Fascism and Communism*

It has also made relations difficult at times between the International Labour Organization and the Fascist Government of Italy : Article 389 stipulates that the governments are to nominate their labour and employers' delegates in agreement with their respective professional organizations. Such organizations in the case of labour are, of course, the trade unions, but these have been abolished in Fascist Italy, which has instead substituted state corporations in which employers and workpeople are lumped together. The workers' groups at one General Conference after the other, acting under the power given to the Conference by Article 389 to scrutinize the credentials of delegates and to refuse

to admit delegates not nominated in accordance with this article, challenged the right of the Fascist workers' delegate to be there at all, on the ground that he did not represent a workers' organization within the meaning of the article, but a mixed body, including employers. The difficulty was that not only did ordinary trade unions not exist legally, but in fact the great bulk of Italian labour was enrolled in the Fascist corporations. After hot debates, and lively demonstrations, this view was accordingly invariably rejected by the employers' and government delegates, and the right of the Fascist corporations to represent Italian labour in the Conference admitted. The result has, however, been to arouse resentment in Italy: Signor Grandi, the Under-Secretary for Foreign Affairs, in a speech made in March 1927, used strong language as to the influence of the Second International and other "enemies of the Fascist State" in the Labour Organization, and threatened that, if the recurring scenes at the General Conference did not stop, Italy would be obliged to revise her attitude towards the Organization.

The incident brings out clearly the fact that the constitution of the Labour Organization is based on the supposition that the States Members will have the "normal" political and economic organization of parliamentary government, private capital and freedom of association for both employers and workers organized professionally against each other and independently of governments. Some difficulty was already experienced on this head because of, *e.g.*, the non-existence of trade unions in Japan—the Japanese labour delegate was at first a "hand-picked" government representative, but the Japanese Government, loyally responding to courteous representations of the Conference, made great and successful efforts to induce Japanese labour to acquire the necessary organization and to choose a real labour delegate.[1] But whereas Japan, India and other countries are simply backward in capitalist development, and may therefore be trusted to acquire the "normal" forms in a longer or shorter interval, the Fascist State of Italy and the Communist State of Russia are both complete and vigorous denials of the very bases on which political and economic life is organized in the rest of the world. In Italy and Russia the State is supreme, and organizations of producers in the community are regarded as integral parts of the machinery of the State. In Fascist Italy the employer survives and workers have

[1] See the chapter in Volume II. on "The Record of the International Labour Organization" for the effect of the International Labour Office on Japanese labour conditions.

been compelled to join in with him under the auspices of the State, while in Russia the private employer has been abolished, or at least his existence is not officially recognized. But both countries are governed by the dictatorship of a party, and every delegate sent by Italy to the International Labour Conference, just as every delegate that would be sent by Russia were that country represented, is in fact simply a government delegate.

(d) *The Nature of Labour Representation*

A further point on which there was considerable controversy was the extent to which a government was bound to appoint a labour delegate from the biggest trade union of the country concerned. The question arose in Holland, where there were several competing trade unions (one Socialist, one " Christian Socialist," etc.). The Socialist Union, which was the biggest of all, denied the right of the government to appoint a delegate agreed on by three other unions, whose combined membership however exceeded that of the Socialist organization. The credentials of the delegate were challenged by the labour group, and after much discussion the Conference asked the Governing Body to request the Council of the League to obtain an advisory opinion from the Court. This was done, and the Court upheld the decision of the Dutch Government, arguing that the object in choosing a labour delegate in agreement with " the industrial organizations . . . which are most . . . representative of . . . workpeople " was to select some one most representative of the whole body of labour, whether organized in one or more groups, or not organized at all. The government could not therefore be bound always to select a delegate from only one union because that happened to be slightly larger than any other union, but could take any delegate agreed to by a number of bodies that between them were the most representative of labour. In practice a delegate is generally chosen from the largest union and appoints advisers from the other unions, in order to satisfy all legitimate claims.

The labour delegates are chosen by the governments in consultation with the most representative workers' organizations. When, as is the case with the General Council of the Trade Union Congress in Great Britain, the whole economic labour movement is strongly organized, it is the workers' organization which suggests the name of the workers' delegate and the names of the two advisers whom he is entitled to take with him for every question on the agenda. The constitutional limit of two advisers each on every question for the three categories of government, employers'

and labour delegates was fixed with the deliberate intention of securing the representative character of the delegations. The limitation prevents any one category from hopelessly outnumbering the other by taking an indefinite quantity of advisers, and means that, as delegates and advisers have all been agreed upon personally between governments and the employers' or labour organizations, it is known beforehand who is to act in place of a delegate on any committee or question. As no delegate can possibly sit on three or four committees at the same time, or be expert on all the highly technical questions that may be discussed by such committees, he is allowed to designate an adviser to take his place. It is a fact worthy of note that the representatives of the employers' group on the Governing Body have in some cases appointed substitutes of their own and not the advisers designated at the time they attended the Labour Conference. In some cases even the substitute has himself appointed a substitute. So far no objection has been raised to this practice, but it is of doubtful constitutional propriety and has the practical disadvantage of meaning that very often the employers' organizations are not, as had been intended by the Conference (and the constitution), effectively represented in the Governing Body.

When the labour movement is weakly organized, agreement between governments and representatives of labour as regards the numbers and names of labour advisers becomes more of a struggle, and it often happens that either there is no adviser or simply one attached to the delegate. In some cases the possibility of appointing advisers is used to placate rival claims within labour organizations, one body being promised a delegate one year and its rival an adviser, provided the order is reversed the next year. In the case of Great Britain, again, the advisers are generally nominated by the different unions specially concerned with the question at issue—that is, an adviser on a question on the agenda of the Conference concerning, for instance, the early closing of shops would be nominated by the Shop Assistants' Union.

THE EMPLOYERS' GROUP

The absence of the employer element was, as we have seen,[1] one of the weaknesses of the old voluntary International Association for Labour Legislation. Under the constitution of the International Labour Organization the representation of employers is compulsory. But the employers' delegates have been very slow to reconcile themselves to this necessity. In all countries they were inclined to

[1] See above, pp. 210, 220.

oppose the coming into existence of the International Labour Organization, and to deny its usefulness and right to exist after it had been founded. In the United States the "capitalist" opposition to the International Labour Organization was one of the big reasons for the rejection of the Versailles Treaty. Most of the campaigns against the Labour Organization on the grounds of its extravagance or inefficiency, or whatever the charge, can generally be traced to the inspiration of disgruntled employers' organizations. This was notoriously the case with the campaigns with which *The Daily Mail* and *Temps* at one time regaled their readers.

The causes of this attitude are many and complex. The deepest is, perhaps, the tradition of individualism, resentment of state interference as expressed in social reform and of the claims of organized labour. The more modern employer has by this time, for the most part, become reconciled to dealing with trade unions and ministries of labour, but he still does not see the necessity for extending these necessary evils to the international field, although he is ready enough to complain at the unfair competition of countries not observing the same standard of labour as his own.

In the second place, there is a curious conflict of interests between the employers—*i.e.* capital organized for social purposes, that is, for negotiation with trades unions—and capital organized for purely economic purposes in chambers of commerce, or as coal, steel or electric trusts or cartels, either national or international. The former are the organizations whose representatives are selected for the Labour Conference, whereas the latter are far the most powerful bodies and generally, to a large extent, subsidize the "social" employers' organizations. To jealousy between these bodies may be attributed the decision of the Governing Body not to accede to the request of the Economic Conference to ask the Governing Body for the appointment of three workers' and three employers' delegates to the new Economic Committee of the League.[1] The Governing Body is, of course, composed of government, employers' and workers' representatives, but since the same governments are already represented in the Economic Committee it would have been consistent to ask for representation of employers and workers. The employers, however, were already represented in the Economic Conference and Committee through their manufacturing and trading organizations, and saw no

[1] See the chapter on economic and financial questions in Volume II. for a discussion of this committee and its work.

reason why their "social" organizations should be represented as well. As the latter are, as has just been explained, dependent on the former, they were simply told that there could be no question of the Governing Body appointing employers' delegates, and the impression thereby created, quite erroneously, that the employers' group took this action out of hostility to the Labour Organization.

The general attitude of the employers' group is, officially and publicly, to pay tribute to the International Labour Organization on all public occasions (lecture platforms, dinners, etc.), and always when opposing any particular line of work or extension of the competence of the Organization to do so in the best interests of the Organization as candid friends, who fear for its future and declare its worst enemies are its too enthusiastic supporters. The fact that the International Labour Office is under the leadership of that gifted and forceful Socialist M. Albert Thomas frightens them, and to prevent the Organization going too far and too fast they feel it is their function to put on the brake. This, of course, is perfectly legitimate, for the employers are in the Organization precisely in order to represent the economic interests of their class, which is an important class in the community and enormously important in production.

Whether they have interpreted this function intelligently and in their own best interests, let alone the interests of the community as a whole, is, of course, a matter of opinion. One suggestion may, however, be thrown out, and that is that employers would be well advised to cure themselves of the habit of speaking as though they and they alone were defending the interests of the community, and particularly the public purse, against the class interests of the workers. They are there on precisely the same basis as the workers —namely, to defend the interests of their class—and their class, as it happens, is numerically a tiny minority in the community and merely a fraction of the workers' class. The government representatives are in the Labour Organization precisely to represent the interests of the consumers and the community at large. When, for instance, the employers in the Governing Body in the March 1927 Conference refused to vote the budget, on the ground that it was excessive and the Labour Organization was going too fast, they did not prevent the budget being adopted, and hardly strengthened their own position or reputation.

PROCEDURE

(a) *The Constitutional Basis*

The procedure of the Conference is regulated by Articles 400-405 inclusive, providing for the election by the Conference of its own president at each session, as well as for the preparation of its agenda by the Governing Body, subject to the right of a government to object to the inclusion of any item or items, and of the Conference to override each objection by a two-thirds vote or to add a new subject to the agenda by a two-thirds vote cast at the preceding session. The Conference regulates its own procedure and appoints committees. The Director of the International Labour Office is the Secretary-General of the Conference (Article 401). Article 403 states that "except as otherwise expressly provided in this part of the present Treaty, all matters shall be decided by simple majority of the votes cast by the delegates present. The voting is void unless the total number of votes cast is equal to half the number of the delegates attending the Conference."

(b) *Growth and General Lines*

On the basis of these brief paragraphs a whole complex machine has been gradually built up, comprising a number of frequently revised Standing Orders and regulations and a large body of unwritten rules and traditions. In general it may be said that the Conference has succeeded in combining the advantages of British parliamentary procedure and the French committee system, with a touch of the Labour and Socialist International. It has succeeded in preserving the balance of interest and work between committees and the full Conference — wherein the League Assembly has failed—and has introduced the refreshing novelty of a closure rule, which might be copied with advantage by other international conferences. The Director plays a bigger part in the Conference than does the Secretary-General in the Assembly, and further differences arise from the fact that the Conference is not, like the Assembly, mistress of its own finances and that its relation to the Governing Body is closer than that of the Assembly to the Council.

(c) *Credentials, Officers and Committees*

The Governing Body act as the officers of the Conference when it meets pending the election of the president, vice-president and committees. The president is elected by the Conference, and hitherto a candidate recommended by the Governing Body has always been chosen. A vice-president is elected from each of

the three groups—governments, employers and workers—in the order of seniority named.

The next step is to divide into committees—namely, Selection, Credentials and Drafting Committees, and various *ad hoc* committees proposed by the Selection Committee for each item on the agenda or for any special question indicated by the Conference.

The Credentials Committee, of course, is appointed at the very beginning, and consists of one representative from each of the three groups. Its duties are obvious. The first business of the Conference is the verification of credentials, and this is no mere formality as regards the workers' and employers' groups, in view of their right to challenge the credentials of any of their members—a right frequently exercised by the labour group and occasionally by the employers.

The Selection Committee, which is the most important committee of the Conference, determines the order of its work, " fixes the date of the plenary sittings, the agenda for each sitting and decides the resolution to be discussed by the Conference at its later sittings " [1]; it also decides on the nature and composition of the other committees, in accordance, of course, with the general desires of the Conference and subject to its approval. The Selection Committee is composed of 24 delegates, 12 elected by the government group, 6 by the employers and 6 by the workers. It appoints the other committees from panels of names submitted by each group and on the principle that the three groups should be represented in the committees in the same proportions as in the Conference itself. It facilitates the conduct of the business of the Conference and is always assisted by the President and Secretary-General of the Conference.

The Drafting Committee must be composed of at least three persons, who need not be either delegates or technical advisers of the Conference. In practice it generally includes the legal experts of the International Labour Office. Its function is to cast the decisions of the Conference into proper legal form and ensure agreement between the French and English texts—no light task in view of the complexity of legal phraseology and the difficulty of finding exact synonyms in the two languages, not to mention the vagueness of international law.

Voting in the committees is by a mere majority and all questions are prepared by them for final discussion in the Conference.

[1] Article 7, clause (*b*), of the Standing Orders of the International Labour Organization.

(d) *The Director's Report*

When the preliminary business of elections, credentials and committees has been got out of the way the Conference comes to the debate on the Director's Report concerning the general work of the Organization in the previous year and the extent to which conventions voted by the Conference have been ratified and are being applied. This, of course, is analogous to the discussion in the Assembly of the Secretary-General's Report on the work of the Council, Secretariat and technical organizations. But whereas in the latter case it is always difficult to get a discussion started and to keep it precise, for the Report is simply a colourless and bald printed record of facts distributed to the delegates, the Director of the International Labour Office himself reads his Report to the Conference—or rather makes a speech on it, and answers interpellations and questions in the grand style. There is more than a touch of the picturesque in both the matter and manner of presentation of the Report, and the occasion serves as an opportunity for a thorough airing of the position and possibilities of the Organization. The opportunity is always used by delegates for making suggestions and criticisms or raising general topics concerning labour which, for one reason or another, have not got on to the agenda or been brought up in the Governing Body.

(e) *Draft Conventions and Recommendations*

The Conference decides whether any proposal adopted by it concerning an item on the agenda shall take the form of a recommendation or of a draft international convention. In every case a two-thirds vote is necessary for adoption, and in framing any recommendation or draft convention of general application the Conference "shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries."

The obligations of member states with regard to draft conventions and the procedure for dealing with them have been described.[1] As regards recommendations, members merely consider whether or not to give effect to them, by legislation or otherwise. That is, the procedure is more elastic and the obligation on governments is less than in the case of draft conventions. But in the case of a federal state, the power of which to enter

[1] See above, pp. 226-231.

into conventions on labour matters is subject to limitations, draft conventions to which such limitations apply may be treated by the government concerned as a recommendation. This provision was put in, as has already been explained, to meet the special case of the United States. Article 405 provides that obligations as regards recommendations and draft conventions shall be interpreted in the sense that "in no case shall any member be asked or required, as a result of the adoption of any recommendation or draft convention of the Conference, to lessen the protection afforded to the workers concerned."

In discussing draft conventions and recommendations the Conference goes through three stages, resembling the procedure in the League Assembly. The first stage is a general discussion, in the light of which the Conference decides the form in which the proposed draft is to be sent to a committee, as well as determines the nature of the committee (since the committees in the Conference are appointed specially for each item and are not—with the exception of the Credentials, Selection and Drafting committees—standing bodies as are the six Assembly committees). In the committees the discussions proceed generally upon a draft presented by the International Labour Office, based upon answers to questionnaires sent in by governments (how the draft is prepared is explained below[1] in the section dealing with the International Labour Office). The text drafted by the Committee is then presented by the rapporteur (generally the Chairman of the Committee) to the Conference. The report and resolutions adopted by the Conference are then sent to the Drafting Committee for putting into final form. Up to this point procedure is by means of a majority vote, but the text submitted by the Drafting Committee must be passed by the Conference by a two-thirds majority. If the Conference fails to pass it as a convention, the resolutions may be reintroduced in the weaker form of a recommendation. Since the first years of the Organization's existence the practice has been established of discussing the idea of a convention at one conference but adopting the text only at the next, so as to leave time for adequate consideration by the governments and interests involved.[2]

At the early stages of discussion the three groups, particularly the employers' and workers' groups, act as compact and more

[1] See pp. 260-263.

[2] *Cf.* the chapter in Volume II. on "The Record of the International Labour Organization," particularly the history of the Eight-Hour Convention.

or less hostile bodies, holding their own group discussions and adopting a collective attitude to the matter in hand. The government group is less clearly defined, and exerts itself to find common ground. Gradually, as the discussion proceeds, compromises are made on all hands, the clear group lines begin to be blurred, and finally the Conference works out and passes well-nigh unanimously some text that takes account of all the conflicting interests and cross-currents so far as is humanly possible. The way agreement slowly emerges bit by bit from what at first appears inextricable confusion of cross-purposes and group hostilities is a most instructive object-lesson in the power of discussion to produce agreement.

(f) *Resolutions and Amendments*

Two days' notice is required for the moving of a resolution relating to an item on the agenda, and seven days' before the opening of the Conference for a resolution not relating to such an item. Urgent motions may, however, be introduced on twenty-four hours' notice with the approval of the "bureau" (president and other officers) of the Conference. Amendments to resolutions may be moved without notice, but only provided a copy of the text has been handed in to the Secretary of the Conference sufficiently early to enable an official translation to be made. It is an unwritten rule that the president should, during the discussion of a motion, recognize in turn, so far as possible, delegates of the three different groups.

(g) *Closure*

A minimum of thirty-five members is required in support of a closure motion. Five minutes only is allowed for a speech against a closure, and any group has the right to appoint a speaker to give its opinion on the subject of the closure.

(h) *Financial Questions*

The Conference is not, like the Assembly, responsible for its own budget, and may not therefore consider any proposal involving expenditure before it has been referred to the Finance Committee of the Governing Body for examination and report. The report of the Finance Committee must be made not later than two days after the resolution has been referred to it, and must be circulated to the Conference at least twenty-four hours before the motion or resolution is discussed by the Conference.

(i) *Records and Counting of Votes*

After some early controversy, the Conference came to the very sensible decision that speeches not delivered in the Conference should not be included in its records (a procedure allowed at the

Washington session of the Conference, held in 1919, and presided over by an American chairman who was guided by the procedure of the American Congress, where the printing in the *Congressional Record* of speeches never delivered is often the only proof to which a Congressman can point with pride of his legislative activities). It was further decided that delegates who abstained should be reckoned as absent when it came to counting the total number of votes cast or deciding whether there was a quorum.

This then is briefly the way the International Labour Conference works and is organized. It has been worth considering in some detail, for whereas the Assembly, as we have seen, is simply a very large recurring conference of government representatives, the Conference is a unique body which has evolved along lines of its own. It is a bold constitutional experiment in international relations, the nearest approach to the world parliament dreamed of by so many idealists and the most original and interesting attempt to reconcile the democratic representation of different elements and group interests in society with the necessity in international affairs of acting through governments if any binding decisions are to be taken.

THE GOVERNING BODY

In the constitution of the Labour Organization the Governing Body is mentioned primarily as the body controlling the International Labour Office. This indicates that its relation to the Office is closer than that of the League Council to the Secretariat, just as the relation of both to the Conference is closer than that of either the Council or Secretariat to the Assembly; the International Labour Organization is indeed a compacter and more homogeneous organization than the League, more truly comparable to one of the technical organizations of the League than to the League as a whole.

Composition

The Governing Body is composed, according to Article 393, of 12 government delegates, 6 delegates elected by the employers' group at the Conference and 6 by the workers' group. Of the 12 government delegates, 8 are appointed by the "members which are of chief industrial importance" and 4 by "the members selected for the purpose by the government delegates of the Conference, excluding the delegates of the 8 members mentioned above. Any question as to which are the members of chief industrial importance shall be decided by the Council of the League of Nations."

It should be noted that whereas the government delegates are selected by their governments, and so come to the Governing Body as national representatives, the six employers' and six workers' delegates are chosen as individuals by the employer and labour groups in the Conference to represent those groups. They therefore come with a certain " collective " mandate from the groups that have chosen them. This difference of status is emphasized by the fact that, whereas the government members are paid by their governments, the representatives of the employer and labour groups are paid for from the budget of the International Labour Organization. They are full members, with a vote and all other rights, of the Governing Body, but *international* members, representing the groups that elected them and not any government or national organization. An employer or a labour member could complete his term of office as a member of the Governing Body even if he were repudiated by the trade union or employers' association to which he belonged at home—and provided he became a member of the Conference and were elected by his group could renew his term of office. In this respect the Governing Body too is a unique experiment, a constitutional innovation in international relations.

The term of office of the members of the Governing Body is three years, and the Body elects its own chairman and vice-chairman, regulates its own procedure and fixes its own times of meeting. A special meeting must be held if requested in writing by at least ten members of the Governing Body. The president may summon an extraordinary meeting when he likes, and must do so if requested by six members from one group (*i.e.* all the employers' or workers' representatives, or half the government delegates). Since the beginning the chairman has been M. Arthur Fontaine (French government delegate), the vice-presidents, M. Cartier (Belgian employers' delegate) and M. Oudegeest (Dutch workers' delegate).

(a) *The States of Chief Industrial Importance*

The original draft presented at the Peace Conference by the British delegation provided that the chief Allied and Associated Powers should be the permanent government members of the Governing Body, but this was hotly contested by the smaller Powers, particularly Belgium, and led to the compromise by which at first six and then (in view of the future admission of Germany and eventually Russia) eight states of chief industrial importance were substituted for the principal Allied and Associated Powers.

(b) *How they were determined*

When it came, however, to determining the eight states of chief industrial importance there was much heartburning and recrimination. The Organizing Committee of the first Labour Conference at Washington after long discussions chose seven criteria (total industrial population, including miners and transport workers; percentage of industrial population in relation to the total population; total horse-power, including water-power; horse-power per inhabitant; total mileage of railways in proportion to area of the country; total tonnage of the merchant marine), applied these criteria as well as it could in view of the fact that most available statistics dated from 1913, and decided that the eight states of chief industrial importance were Belgium, France, Germany, Great Britain, Italy, Japan, Switzerland and the United States. Poland, Sweden, Spain, Canada and India immediately protested. Spain, Canada and Poland were provisionally pacified by being made elected members of the Governing Body, while Sweden agreed to withdraw her claim. India and, subsequently, Poland however brought the matter before the Council of the League in 1920. The Council appointed a committee, composed of four members of the Governing Body and four experts chosen by the Secretary-General.

After prolonged studies, and reports of a truly terrifying complexity and technicality, the Committee declared in favour of an ingenious and elaborate system of four absolute and four relative criteria,[1] evolved by an Italian professor, which, however, it was discovered possessed the defect that they could not be applied, as the information necessary to apply them was not available in the deplorably unstable and unsettled condition of the post-war world. The Committee was therefore driven back upon the criteria of the Washington Conference, but based on more recent and correct data.

On the basis of these criteria, and in the light of the fact that the

[1] The four " absolute " indices for each country were:
1. The number of workers to be protected by international labour conventions or agreements.
2. The number of emigrant or immigrant workers.
3. The value of the total net production.
4. The value of exports and imports.

The four " relative " indices were:
1. The relation of the number of state workers to the total adult population.
2. The relation of the number of emigrant and immigrant workers to the total population.
3. The amount of net production per head of adult population.
4. The relation of the amount of special trade to the value of the total net production.

United States was no longer looked upon as a possible member, the Council in 1921 decided that the eight states of chief industrial importance were Belgium, Canada, France, Germany, Great Britain, India, Italy and Japan.

(c) *The Demands of the Non-European States*

This solution, however, while recognized as an improvement on that of Washington, did not satisfy the demands of the non-European states, which began in the Labour Organization, as in the League, to demand that more attention should be paid to their needs and importance, since the Organization was meant to be world-wide and not European. A complaint was made at Washington that of the 24 members of the Governing Body there were 20 Europeans, and that of the 12 government members there were 9 Europeans and only 3 non-Europeans. The obvious answer was, of course, that as regards workers' and employers' delegates a good many of the non-European states—particularly the Latin Americans, whose ideas of their international importance too often impels them to try to make up in emphasis what they lack in weight—simply have no employers or labour organizations in their respective countries, and do not even send full delegations, but only the two government delegates.

(d) *The 1922 Amendment*

Nevertheless the tendency of the other continents since the war to stress their growing importance *vis-à-vis* Europe[1] is too real and too profound a phenomenon to be disposed of by any particular objections, however reasonable they may be with regard to some specific case. Various attempts to hold the balance even between Europe and the other continents ended in the voting by the Fourth Labour Conference in 1922 of an amendment to Article 393 increasing the number of members of the Governing Body from 24 to 32—namely, 16 government delegates, 8 employers' and 8 workers'. Of the 16 government delegates, 8 should represent the states of chief industrial importance and 8 be appointed by members elected by the government delegates of the Conference (excluding the delegates of the eight states of chief industrial importance). " Of the 16 members represented, 6 shall be non-European states." Of the employers' and workers' representatives, 2 employers' and 2 workers' should belong to non-European states. This amendment, however, although passed by an overwhelming majority, has not yet been ratified by the requisite number of States Members of the League Council and three-fourths of the

[1] For a consideration of this point see Volume III.

States Members, and the old arrangement therefore still remains in force.[1]

It should be noted that the states of chief industrial importance have not the same security of tenure as the permanent members of the League Council, for the latter are designated as such by name, and once made permanent there is no provision in the Covenant for reversing the decision. On the other hand, a state is of chief industrial importance only so long as it can pass the tests, and it is open to any other state on the expiry of the three years' term of office of a member of the Governing Body selected by a state that no longer fulfils the conditions to claim the seat and thereby compel a re-examination of the question.

(e) *The Necessity for Enlargement*

It is likely that in time the necessity for enlarging the Governing Body will become so imperative that the revised text will be ratified, for it is obvious that if and when the United States and Soviet Russia become members or associate members of the League they will have to receive permanent seats on the Governing Body, while the restoration of order in China, together with the rapid strides in industry and trade which have been made in that country during the last few years, in spite of the civil war, will entitle it to claim equal rank. On the other hand neither Canada nor India is likely willingly to renounce the position at present held, and an analogous situation will therefore be created to that with which the League Council was faced and which ended in its reorganization and extension.[2]

FUNCTIONS AND METHODS

(a) *Functions*

By Article 400 of the constitution the Governing Body is charged with the duty of framing the agenda for all meetings of the Conference, and for that purpose of considering any suggestion made by the government of any of the members or by any representative

[1] Ratification by " the States whose representatives compose the Council of the League and by three-fourths of the members " is interpreted as meaning a three-fourths majority of the members, including all those which compose the Council. It is, therefore, necessary to get the ratifications of forty-two states (three-fourths of the fifty-five members of the League—or of the Organization, according to the point of view)—including all the members of the Council. By May 1928 there were thirty-eight ratifications, including all the permanent members of the Council but Italy, and all the non-permanent members but Chile and Colombia.

[2] M. E. Mahaim (*L'Organisation Permanente du Travail, Rêcueil des Cours à l'Académie de Droit International*, iii., 1924, Tome iv. de la Collection, pp. 180-181) suggests that the result of having a Governing Body of thirty-two members may be to necessitate the reduction of its sessions to two a year and the setting up by it of an executive committee.

labour or employers' organization recognized as such under Article 389. It is further responsible for the control of the International Labour Office and, under Article 408, for determining the form and particulars of the annual reports which the members agree to make to the Office on the measures they have taken to carry out conventions they have ratified. Control of the International Labour Office includes appointment of the committees which work in connexion with the Office and the framing of the budget. Lastly, the Governing Body takes a prominent part, as already described, in the procedure for settling disputes or complaints arising out of alleged non-execution by a member of a convention which it has ratified.

(b) *Meetings*

To discharge these functions the Governing Body meets from four to seven—generally five—times a year, for about a week each time. Its meetings are now almost invariably public, although for the first few years they were private.

(c) *Discussion and Framing of Agenda*

Once the Governing Body has decided to put a question on the agenda of the Conference it has no longer the right to reverse this decision. By Article 402 of the constitution the only way of taking a question out of the agenda is to have an objection made by some State Member and upheld by a two-thirds vote of the Conference. For this reason great care is exercised in the consideration of proposals for putting questions on the agenda, and the Standing Orders of the Governing Body provide that failing a unanimous decision to the contrary a proposal made at one session can be decided only at the next session. In the early period of the Labour Organization the discussion of the agenda of the Conference did not occupy a very prominent place, but as the bulk and importance of the work being done by the Organization has increased, this item plays an ever greater part in the deliberations of the Governing Body. The control of the latter over the agenda and work of the Conference has been strengthened by the custom that has grown up of appointing practically all the members of the Governing Body to the Selection Committee of the Conference and thereby providing the continuity and expert knowledge which are of such great practical value in committee work.

(d) *The Director's Report*

The first item on the agenda of the Governing Body is always the report of the Director, who gives a full account of all that has happened since the last session, and in particular of the number

of ratifications of conventions and the measures taken by the governments to carry out the conventions they have ratified. The chief discussions of the Governing Body centre round the Director's report. Thus, for instance, it is easy to realize how much the Governing Body has been concerned with the failure of certain important states to ratify the eight-hour convention, the effect of this failure on those who have ratified and on the prospects of future ratification, etc. The Governing Body, in fact, is, so to speak, the High Command of the International Labour Organization, receiving reports from its Chief of Staff and discussing the military situation and plan of campaign in the light of these reports.

(e) *Control of the Office*

The control of the International Labour Office naturally took up a good deal more of the time of the Governing Body in the first two or three years, when it was a question of organizing the Office and indicating the lines along which it should work, as well as its relations with the governments, labour and employers' organizations and other parts of the machinery of the Organization. The discussions of this early period were rendered particularly lively by the determined attempts of the employers' group to limit the functions of the Office as much as possible and their strenuous objections to every new enlargement of those functions. In M. Thomas, however, they found more than their match: it might almost be said that the control of the International Labour Office by the Governing Body has become a study in the successful management of the Governing Body by the Office.

(f) *Drafting the Budget*

Part of the functions of the Governing Body is to frame the draft budget. The procedure that has gradually been worked out is for the draft budget to be drawn up by the International Labour Office, scrutinized and adopted by the Budget Committee of the Governing Body, and by the latter itself at its second annual session (March-April), then submitted to the tender mercies of the so-called Supervisory Commission,[1] where it is defended by the redoubtable M. Thomas, and finally passed on via the Council to the Assembly, where it comes before the Fourth Committee. Here again M. Thomas enters the lists, just as does the Secretary-General on behalf of the portion of the budget devoted to the League, and as does the Registrar of the Court or his representative for the part of the budget concerning the Permanent Court. The consolidated budget is then passed by the Assembly, and the portion

[1] See below, p. 438.

accruing to the Labour Organization handed over to the Labour Office from month to month, in the manner described below (Chapter XI.).

RELATIONS OF THE GOVERNING BODY TO THE CONFERENCE

The relations of the Governing Body to the Conference are made fairly clear by what has already been said of the composition and functions of each. They are often compared to those of the Assembly and Council of the League, but in many respects resemble those of the committee and conference of a League technical organization. Thus the Governing Body frames the budget of the Organization, and prepares the agenda of the Conference. Most of its work is preliminary to the decisions and subject to the approval of the Conference. This is brought out by the references to the Governing Body in the constitution of the Organization. Article 20, Paragraph 6, of the Standing Orders provides that "If the decisions of the Governing Body are not approved by the Conference, a new election shall be held."

THE INTERNATIONAL LABOUR OFFICE

THE DIRECTOR

The International Labour Office is the Secretariat-General of the International Labour Organization, and its officials have generally the same ranks, status and salaries as those of the Secretariat. But the Office is a smaller and more compact body than the Secretariat, with 350 officials divided into three great interconnected divisions as compared with the 600 officials and eleven more or less independent sections of the Secretariat. The head of the International Labour Office, too, plays a relatively greater part in his organization than does the Secretary-General in his greater and more diffuse sphere of action. This is partly due to the fact that the International Labour Organization deals with a comparatively limited, definite and largely technical part of international relations, whereas the League ranges over the whole field. Consequently the relations between the Governing Body, Conference and Office of the International Labour Organization in some ways resemble those of the Committee, Conference and Secretariat of a League technical organization rather than the League as a whole, while the personal rôle of the Director of the Office and his relation to his staff are like those of a technical director. Partly, too, it is a question of personality: Sir Eric Drummond has the tradition of modest anonymity of the British

civil servant, and would appear to interpret his rôle as that of harmonizing and integrating existing forces and tendencies ; he believes his task is essentially to guide and co-ordinate, not create ; he consents only reluctantly and in response to clearly proved necessity to the increase in organization and multiplication of functions and responsibilities brought by the growth of the League. M. Thomas, on the other hand, is in the *prima donna* tradition of the French politician who is also an orator, endowed with diplomatic skill as great as his energy and ambition, and inspired by the generous enthusiasm of a socialist. He welcomes every new task and opportunity of service for his Organization, and harangues, bullies and coaxes the Conference and Governing Body, drives himself and manages his devoted staff with a picturesque ubiquity, directness and drive that would be quite impossible on the vaster stage of the League with such awkward material to handle as high politics and foreign ministers.

DUTIES OF THE OFFICE

As M. Thomas rightly pointed out in his report to the Conference of 1924, the constitution is vaguer with regard to the competence and functions of the International Labour Office than as to the Conference and Governing Body. It defines these functions as follows in Article 396 :

" The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

" It will prepare the agenda for the meetings of the Conference.

" It will carry out the duties required of it by the provisions of this Part of the present Treaty in connexion with international disputes.

" It will edit and publish in French and English, and in such other languages as the Governing Body may think desirable, a periodical paper dealing with problems of industry and employment of international interest.

" Generally, in addition to the functions set out in this Article, it shall have such other powers and duties as may be assigned to it by the Conference."

The constitution further provides that the Director shall be appointed by the Governing Body, and, subject to its instructions, shall be responsible for the conduct of the Office and for appointing the staff. By Article 388 the Office is controlled by the Governing Body ; by Article 398 it is entitled to the assistance of the League Secretary-General in any matter in which it can be given, and by Article 397 " the Government Departments of any of the members which deal with questions of industry and employment

may communicate directly with the Director through the representative of their Government on the Governing Body of the International Labour Office, or, failing any such representative, through such other qualified official as the Government may nominate for the purpose." That is, the Office deals direct with ministries of labour and does not have to resort to the cumbrous procedure of going to diplomatic representatives of foreign offices and through them to the department concerned.

The International Office that had been set up by the pre-war International Association for Labour Legislation was an indication of what might be expected from a permanent official technical service that gathered and prepared information, facilitated the holding of conferences and followed up their decisions. To understand the rôle of the Labour Office in these matters it is only necessary to refer to the chapter on the Secretariat of the League, with the additional proviso that the rôle of the Office is of relatively even greater importance: not only does it act as a clearing house of information on international labour questions, but prepares the reports, questionnaires and texts that serve as the basis for the conventions adopted by the Conference. For this purpose it is aided by groups of experts or advisory committees much like those that assist the Secretariat.

ORGANIZATION

To carry out its duties the Office is divided into the Director and his " cabinet," the administrative and internal services under the Deputy Director and three great Divisions, the Diplomatic Division, Research Division and Intelligence and Liaison Division.

(a) *The Director's Cabinet and Secretariat*

The Director's " cabinet," as its name implies, and as the nationality of the Director would lead one to expect, is the application to the Organization of the Labour Office of the French idea of a *chef de cabinet* or personal assistant attached to the head of a Civil Service.[1]

The Cabinet prepares questions for submission to the Director, transmits his decisions and watches over their execution. It consists of five members, and has attached to it the Director's private secretariat for the clerical work, such as filing, typing, etc.

There is also a small Press service attached to the Director, which is responsible for contacts with the daily Press—*i.e.* discharges some of the same functions as those of the Information Section in the League Secretariat.[2]

[1] See above, p. 199.

[2] See pp. 187-188 above, and p. 264 below.

(b) *The Deputy Director*

The Deputy Director (an Englishman), who is responsible for the whole Office during the frequent absences of the Director on official journeys to keep in touch with labour matters in countries belonging to the Organization, has under his direct responsibility an Administrative section, comprising the central services (registry, internal distribution and dispatch of all correspondence, typing, multigraph and Roneo branch, financial control and accounts, staff branch, material branch and household services) and the Publications and Translation section (editorial and translation service and printing and distribution branch), which is responsible for the examination, translation, publication and preparation for printing and for the sale and distribution of all office publications.

(c) *The Diplomatic Division*

The head of the Diplomatic Division (Irish) is responsible for the whole office in the absence of the Director and Deputy Director. The Diplomatic Division is responsible for correspondence arising out of the general application and interpretation of Part XIII. of the Versailles Treaty, for the preparation and secretarial conduct of meetings of the Conference and Governing Body, and for other matters concerned with the ratification or interpretation of draft conventions. For this purpose it is divided into three sections, a Legal Service and a Migration Service.

The first section comprises the secretariat of the Governing Body and its committees, and is responsible for reporting on the application of conventions (Article 408 of the constitution), the records of the conferences and the preparation of the official bulletin, as well as general questions relating to the ratification of conventions.

The second section prepares the General Conference, conducts official correspondence with governments, and deals with maritime questions in conventions.

The third section is concerned with conditions of labour in colonies, protectorates, possessions and territories under mandate, native labour, forced labour and slavery, the application to colonies and other than metropolitan territories of ratified conventions (Article 421 of the constitution declares that: "The members engage to apply conventions which they have ratified . . . to their colonies, protectorates and possessions which are not fully self-governing: (1) except where, owing to the local conditions, the convention is inapplicable, or (2) subject to such modifications as may be necessary to adapt the convention to

local conditions. And each of the members shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing ") and labour conditions in the Far East.

The Legal Service gives legal advice on questions referred to it and assistance as regards the legal aspect of questions which may be the subject of studies or research (fulfilling, that is, roughly the same functions as the Legal Section of the Secretariat [1]).

The Migration Service deals with matters concerning emigration, immigration and the protection of foreign workers, the collection of information (legislation, etc.) affecting emigrants and immigrants, and the preparation of material for publication.

(d) *The Research Division*

The function of the Research Division is to collect texts relating to labour legislation all over the world and issue them periodically, to study a number of problems that are ancillary to the framing of labour conventions, and generally to gather the data that are indispensable for those who are to frame labour conventions and concern themselves generally with the international aspect of social reform. The division is divided into the following sections and services :

A. *First Section.*—Preparation of statistical studies relating to labour ; collects and compiles statistics of prices, cost of living, wages, and of all subjects relating to labour ; works out statistical methods and tabulations with a view to ensuring co-ordination and uniformity of statistics relating to labour ; also other studies having for basis principally statistics concerning labour (housing, etc.) ; collaboration with the statistical services of the League of Nations.

B. *Second Section.*—Preparation of studies relating to legislation and the legal regulation of labour. Preparation of comparative studies of legislation, administration and legal procedure in connexion with questions of labour. Translation and publication in French, English and German of the more important laws and administrative orders in all countries in the world ; maintains the register of social legislation. Comparative study of judicial decisions and jurisprudence concerning labour which may be important from an international standpoint. Preparation of studies of collective agreements (hours of labour, wages, methods) and of conciliation and arbitration.

C. *Third Section.*—Preparation of studies of labour conditions

[1] See above, pp. 186-187.

other than those having solely or essentially a statistical or juridical basis ; intellectual workers (collaboration with the International Institute for Intellectual Co-operation) ; woman and child labour ; night work ; workers' leisure ; technical training (pre-apprenticeship, vocational guidance, apprenticeship, technical education) ; scientific methods of work, etc.

D. *Fourth Section.*—Comprehensive study of economic factors in so far as they affect labour.

E. *Social Insurance and Disablement Service.*—Preparation of studies on all questions relating to social insurance and men disabled on account of war or industry (calculation and payment of allowances, vocational training, means of finding employment, wages, etc.).

F. *Unemployment Service.*—Prepares comparative studies of the various technical problems connected with unemployment ; statistical methods, systems of unemployment relief and insurance, methods of finding employment, relief works, etc. Studies the facts and problems relating to employment in relation to economics (general theory, periodical crises, seasonal, accidental, etc.) ; collaboration with the Economic Section of the League Secretariat.

G. *Agricultural Service.*—Studies relating to agricultural labour ; conditions of labour (hours, wages, unemployment, contracts) ; repercussion on agricultural labour of economic conditions of agriculture. Agricultural technical education ; agricultural co-operation. Collaboration with the International Institute of Agriculture, Rome, and also with the important agricultural organizations.

H. *Industrial Health Service.*—Deals with all questions connected with industrial hygiene, including comparison and co-ordination of the legislative provisions of different countries ; prepares general or special inquiries on unhealthy occupations ; collaboration with Health Organization of the League of Nations.

I. *Safety Service.*—Studies reports of factory inspectors in respect of accident prevention and of other organizations which enforce safety measures ; prepares comparative studies of the organization of factory inspection in industrial countries ; reads periodical publications dealing with technical questions of industrial safety and prepares information on the more important events for the publications of the Office.

J. *Russian Service.*—Studies social and economic questions in Soviet Russia (labour conditions, vocational organization, output, etc.).

(e) *The Intelligence and Liaison Division*

The Intelligence and Liaison Division includes the Library of the Office, but exists mainly for keeping in touch with national or international organizations of employers, workers, co-operative societies, League of Nations unions, etc., that are interested in the International Labour Organization. This division, with the Press service, fulfils approximately the functions of the Information Section in the League Secretariat,[1] but differs from the latter in that it exists as much to receive information from these bodies of interest to the Office as to impart knowledge to them. Its functions differ from those of the Research Division in that it collects and transmits current information, whereas the Research Division undertakes investigations whose ultimate object is to prepare data for the use of the Organization. This division is divided into several sections.

The First Section consists of:

(1) An employers' organization service for relations with international and national employers' organizations and the preparation of information with regard to them.

(2) A workers' organization service performing the same functions with regard to international trade union associations, national trade union movements and women's organizations.

(3) Co-operative organizations service, which has a similar relation to the co-operative movement.

(4) The Library.

The Second Section contains the Information and Documentation Service (for obtaining and distributing information), the latter responsible for subscriptions to, examination and circulation of periodicals, distribution and circulation of press-cuttings, centralization of all information obtained by the Office in reply to requests for information, the reading of periodicals and preparation of résumés of articles, parliamentary reports, reports of correspondents and press-cuttings.

CONCLUSION

This then, roughly, is the way the International Labour Organization is composed, and how it works. In Volume II. an account is given of what it has accomplished since its inception and its main difficulties and possibilities of development in the world as it is to-day.

There is no doubt that in some ways the International Labour

[1] See pp. 187-188 above.

Organization is the most far-reaching and direct attack on cherished dogmas of international anarchy and mystic sovereignty, and the most direct recognition of the changed status of labour and the overwhelming importance in modern society of the relations between labour and capital, to which governments have been—or are likely in the near future to be—committed in the field of international relations.

CHAPTER IX

INTERNATIONAL LAW

If ever there is to be an organized world society guaranteeing peace it must be based on a world law. The beginnings of such law exist in the body of rules and customs known as international law and defined as " the rules acknowledged by the general body of civilized independent states to be binding upon them in their mutual relations." [1] The members of the League in the preamble to the Covenant undertake to promote international co-operation and achieve peace and security, by, among other things, " the firm establishment of the understandings of international law as the actual rule of conduct among governments," and by Article XIV. agree to set up a Permanent Court of International Justice. Thus the Permanent Court came about as an integral part of the attempt at world peace and organization embodied in the League of Nations. But this attempt, as we have seen in the case of the Assembly, Council and International Labour Organization, and as we shall see is also the case for all the auxiliary organizations,[2] was itself a fresh start, a taking up on a broader basis, with greater energy and clearer vision, of more or less successful efforts begun before the war and sometimes dating back for a century or more. In no case is the connexion with the past clearer than in that of the Permanent Court, which is a lineal descendant of The Hague Conferences of 1899 and 1907. These conferences in their turn represent the culminating point of the effort before the war to consolidate and develop international law, and while the League far transcends this effort, and has taken up the striving to attain world peace on wider and deeper foundations, it includes and promises to carry further everything that has proved viable in The Hague Conferences and the pre-war evolution of international law. In order to grasp the significance and the place in the scheme of things of the Permanent Court, it is therefore necessary to consider its relation to the League, and the changes in international law introduced by the League, and these again can be understood only after examining the nature and status of international law before and during the world war.

[1] Lord Birkenhead, *International Law*, 6th edition, revised and enlarged by R. Moelwyn Hughes.

[2] Described in Volume II.

ORIGINS OF INTERNATIONAL LAW

Anthropologists may be tempted to trace international law back to the customs of savages, such as the truce observed by warring tribes about a deposit of salt or ore-bearing rocks, the rules governing "silent barter" and other forms of trade, and in general the sometimes very elaborate codes by which the relations of neighbouring tribes are conducted, in feuds as well as in periods of relative tranquillity.

Text-books on international law, however, do not as a rule go further back than the laws of Manu in India (500 B.C.) or some of Jehovah's injunctions to the children of Israel as recorded in the Old Testament, regulating the forms of death and devastation to be inflicted on their and his enemies.[1] The immunity of heralds, right of asylum and laws of hospitality, the holding of hostages and sending of special missions (envoys, embassies), the conclusion of treaties and alliances, have all been known in the relations of political communities with each other since time immemorial. The Greek city-states developed these ancient practices somewhat, and recognized certain rules among themselves, though scarcely with reference to the barbarians "beyond the pale."

ROME

Rome, although the legal codes it gave the world were destined to have an incalculable influence on international law,[2] was a direct forerunner only to a limited extent, for the Roman Empire had radically different conceptions of international relations from those of our day. In the earlier days of the Roman Republic there was some recognition of the co-existence of other independent communities and a certain tendency to develop rules of conduct based on this recognition. But the later and characteristically Roman view was that Rome was the world, and those who were not Roman citizens were more or less negligible barbarians. Rome was responsible for a considerable development of practices such as the conclusion of alliances, the sending and immunity of ambassadors, naturalization, extradition, the right of asylum, treatment of prisoners and enemy property, exchange of prisoners, burial of the dead in war, truces, armistices, ransoms, hostages, etc. But fundamentally the Roman Empire's relation to other communities was one of a superior to inferiors. Rome would for instance consent to be the arbitrator between barbarians in quarrels with each

[1] Lord Birkenhead, *International Law*, 6th edition, p. 2.
[2] See below, p. 276.

other, but never contemplated that her relations with these "lesser breeds beyond the law" should be subject to the same rules.

THE DARK AGES

After Rome came the break-up and relapse of civilization known as the Dark Ages—although they are no longer regarded as quite so dark and cut off from the traditions of Rome as was the fashion among nineteenth-century historians. The Middle Ages in their turn broke up in the Renaissance and Reformation, and the emergence in the latter of the conception of the sovereign state coincided with a realization of the fact that states, however sovereign they may aspire to be, cannot escape the necessity of regular and continuous relations with each other. Thus the attempt to reconcile the concept of sovereignty with the necessity for permanent intercourse is at the root of the body of customs and traditions we know as international law.

THE MODERN STATE SYSTEM

The state system we know, and which is commonly regarded as of immemorial antiquity, is actually less than three centuries old, for it dates back only to the Peace of Westphalia that closed the Thirty Years War in 1648. At this peace the equal right of all states, whether Protestant or Catholic, great or small, to existence and independence was recognized, as well as the virtual sovereignty of the princes and cities contained in the Holy Roman Empire. At this peace too the practice was inaugurated by which states kept permanent representatives (ministers or ambassadors) in each other's capitals. Thus the foundations of modern international society were laid.

(a) *Its Members*

In this way the states who were present at the Peace of Westphalia were the original members, so to speak, of the community of nations acknowledging international law. At a later date Russia, under Peter the Great, which previously had formed a separate system or community of states with Poland, Sweden and Denmark, joined the European system, and the two were fused. The revolt of the American colonies added the United States, as a nation of European blood and traditions, to the system, and later the assertion of independence by the former colonies of Spain added South and Central America. States such as Turkey, Persia, China and Japan occupied for a long time an intermediary position, being recognized as in some respects bound by the same rules of international law and entitled to the same treatment as European countries, but half outside the system and in a position of

inferiority owing to the existence of the so-called capitulations or consular jurisdiction for foreigners. Japan first freed herself from this system, and after beating Russia in war, and so earning the esteem of the Christian nations of Europe, was raised to the rank of a Great Power. Turkey passed her full membership test, so to speak, only at the Lausanne Conference, when the capitulations system was abolished, and the question of abolishing them in Persia, Egypt and China is now a burning topic.

(b) *The Concept of Sovereignty*

The conception of state sovereignty dates from the time when most heads of states were monarchs who were "sovereign"—that is, the supreme authority over the peoples they ruled. At first, owing to a blend of feudal and Roman notions, the ruler of a community was thought of as the owner of the land on which the community lived, so that states were conceived of as glorified estates, the property of their rulers. Gradually, as the idea of the state became separate from that of its ruler or government, and as republics or limited monarchies appeared side by side with autocracies, the term "sovereign" was transferred to the state, and was used quite improperly with reference to the mutual independence of states. Thus "sovereign"—which meant that the ruler of a state was supreme over his subjects, a definite and tangible meaning—came to connote the absence of any authority to which states owed allegiance, and vaguely implied that each state was supreme, the highest and most comprehensive authority of the community of which it was the political expression.[1] The term "sovereignty," therefore, it may be said, has been a misnomer and a source of confusion from the moment of its introduction into international parlance. The theory for which it stood however represented an advance in clarity and precision over the confusion of allegiances and jurisdictions arising from the remains of the feudal system, the growth of guilds and free cities, and the conflict of Church and Empire. Sovereignty from this point of view meant a concentration of power and responsibility that helped people to "know where they were."

(c) *Sovereignty and International Law*

The idea of sovereignty was also difficult to reconcile with the very conception of international law.

"The absolute independence of states, though inseparable from international law in the shape which it has received, is not only unnecessary to the conception of a legal relation between communities independent with respect to

[1] See below, pp. 304-305.

each other, but, at the very least, fits in less readily with that conception than does dependence on a common superior. If indeed a law had been formed upon the basis of the ideas prevalent during the Middle Ages, the notion of the absolute independence of states would have been excluded from it. The minds of men were at that time occupied with hierarchical ideas, and if a law had come into existence it must have involved either a solidification of the superiority of the Empire or legislation at the hands of the Pope. Law imposed by a superior was the natural ideal of a religious epoch; and in spite of the fierce personal independence of the men of the Middle Ages, the ideal might have been realized if it had not been for the mutual jealousy of the secular and religious powers. As it was, neither the Church nor the Empire became strong enough to impose law. With their definitive failure to establish a regulatory authority international relations tended to drift into chaos; and in the fifteenth century international life was fast resolving itself into a struggle for existence in its barest form. In such a condition of things no law could be established which was unable to recognize absolute independence as a fact prior to itself; and rules of conduct which should command obedience apart from an external sanction were the necessary alternative to a state of complete anarchy." [1]

Grotius

The father of modern international law is generally considered to be Hugo Grotius.[2] Like all learned men of his day, Grotius was not a specialist but delved deeply into every field of knowledge—law, theology, politics, scholarship—and had a tremendous respect for the old civilization of Rome. Grotius' famous book, *De Jure Belli ac Pacis*, appeared in 1625, and laid the foundations for what was to prove a new science—that of international law. Grotius devoted much of his book to showing what the relations between states ought to be, and justified his views by appeals to Roman law and the " laws of nature."

The " Naturalist " Attitude

In this he was followed by his successors, who for the most part approached international law from the point of view of what it ought to be quite as much as from that of what it actually was, and derived their opinions from three principal beliefs, that may be analysed as follows : (1) the law of nature. This in Grotius' mind, and so far as it survives in modern times, means simply our ethical and social impulses, which Grotius believed however to be implanted by God and capable of yielding a code of conduct if sufficiently analysed. But the doctrine at the height of its influence had

[1] Hall's *International Law*, 8th edition, edited by Professor Pearce Higgins, p. 18.

[2] Although increasing attention is being paid to the Spanish fathers of the sixteenth century, particularly the Dominican theologian and jurist, Franciscus a Victoria, who was the first to use the term " international law " in a Latin form—" jus inter gentes "—in preference to the older and more ambiguous " jus gentium " (law of nations). Jeremy Bentham appears to have been the first to use the term " international law " in English and to point out that the " law of nations " was a term whose meaning was obscure.

accumulated other elements and reasons for its authority, which may be analysed as follows: First of all a deduction from the cosmogony of Zino, which postulated a primitive substance (*pneuma*), the physical rules of whose development were known as the laws of nature. This became confused with the attraction felt by Roman civilization for the supposedly " primitive " simplicity and severity of the Stoic way of life and the belief of the ancients in a " golden age " preceding civilization. Out of all this came the belief in immanent and absolute standards of right, inherent in the order of nature, of which human laws were but the imperfect discovery and application.

(2) In the second place there was the feeling, shaken but not destroyed by the Renaissance and the Reformation, that from Christian theology could be deduced the commands of God for the whole of human conduct, including the relations between Christian nations (for in those days non-Christian nations were not considered part of the " system of states ").

(3) Lastly, there was the idea that the Roman *jus gentium*, owing to its name and the universal respect for Rome, as well as the belief that it was " written reason " expressing the laws of nature, was the rule of conduct by which sovereigns should be governed in their relations with each other, since these relations were in a state of nature and therefore could be governed only by the laws of nature or of nations (the two being often identified and both confused with Roman law).

NATURALISM AND POSITIVISM

Results and Evolution of Naturalism

The result of these beliefs was a habit of deducing international law from some imaginary absolute standard of right and also of transferring to international law large quantities of Roman law. This habit was strengthened by, and perhaps also in part accounts for, the tendency to talk of law in general as though it were a " brooding omnipresence in the sky " being progressively discovered and applied by man, and not a set of rules and customs " secreted " by human societies in the course of their evolution, to serve the needs of social intercourse. It was also encouraged by the ambiguity of the words " jus " in Latin, " droit " in French and " Recht " in German, each of these words meaning what we should express by the two words " right " and " law " in English. Therefore to jurists writing in these languages it was difficult to

distinguish between rules mentioned with reference to the fact simply that they existed and standards of conduct which ought to be made rules because they were " right." Gradually, as human knowledge advanced, spread out into the universe and penetrated more deeply into the mysteries of human origin and development, it became realized that the confusion between the laws of nature and human laws must be cleared up. Laws of nature in modern scientific parlance simply mean a statement that things happen in such-and-such a way, and if a law of nature is once broken it ceases to exist. Human laws, on the other hand, are rules of conduct which exist irrespective of whether they are broken or not. The laws of nature, therefore, have no connexion with human behaviour or morals, whereas human law is supposed to regulate the one and be consonant with the other. As the legend of the noble savage and the laws of God began to evaporate, extra-human sources of inspiration became vaguer, more remote, and irrelevant to the concrete problems of conduct with which law was concerned —the walls of the universe receded and the connexion between the doings of humanity and metaphysics became intangible and doubtful. At the same time the number, precision and variety of the customs and rules governing the relations between states increased as civilization grew more complex and contacts between nations multiplied.

THE APPEARANCE OF POSITIVISM

These changes led to writers on international law breaking up into two schools of thought, whose nature and differences are aptly summarized as follows by Hall (*ibid.*, p. 1) :

" Two principal views may be held as to the nature and origin of these rules [international law]. They may be considered to be an imperfect attempt to give effect to an absolute right which is assumed to exist and to be capable of being discovered; or they may be looked upon simply as a reflection of the moral development and the external life of the particular nations which are governed by them. According to the former view, a distinction is to be drawn between international right and international positive law; the one being the logical application of the principles of right to international relations, and furnishing the rule by which states ought to be guided; the other consisting in the concrete rules actually in use, and possessing authority so far only as they are not in disagreement with international right. According to the latter view, the existing rules can only be affected through the same means by which they were originally formed—namely, by growth in harmony with changes in the sentiments and external conditions of the body of states."

The old school became known as " naturalists," the new school as " positivists."

Its Advantages

It was fairly obvious that, as ideas as to the rules of conduct implied by theology or the "laws of nature" became vaguer and more contradictory, it was increasingly difficult to get any agreement among "naturalists" as to the basis for their doctrines and beliefs. In the first place those who believed in the law of God —that is, who erected their standards metaphysically—had no common datum line or point of reference with those who deduced their doctrines from human nature, and the two could construct different systems independent of each other, like the relation between the geometry which starts with the axiom that a straight line is not the shortest distance between two points and orthodox mathematics. Again, if any theory of absolute right were generally accepted, the same difficulty would arise each time the theory had to be applied in practice, and it would not, in fact, be possible to get any other evidence for its correct interpretation than that afforded by the existing rules acknowledged by the community of states. As Lord Birkenhead puts it,

"the rules of international law are not a perfect system, existing somewhere in the clouds and intuitively determinable, but are generalizations inductively drawn from the practice of civilized states in their mutual dealings. The adoption of this view effects an immense simplification in the study of international law; when once the *a priori* method is laid aside, the occasions for obscurity become infinitely fewer, and the science at least rests upon a firm historical basis. To decide whether a given practice is legal or illegal, an examination of precedents is necessary of a kind very familiar to all lawyers. If authority pronounces itself in favour of a particular practice, a writer who disapproves of it must content himself with advocating a change."[1]

Elsewhere he remarks that a study of diplomatic correspondence almost suggests that "when no other argument offers, try 'the law of Nature,'" describes the position of the "law of nature" to international law to-day.

"Many writers in dealing with concrete matters of controversy have appealed to the law of Nature in the terms appropriate to an English barrister who hands up to the Court a recent decision in the House of Lords. . . . So abused, the law of Nature becomes a subtle and disingenuous pretext for dogmatism."[2]

And Drawbacks

On the other hand, as we shall see below,[3] the abandonment of the "naturalist" position has tended to cause stagnation in international law, with consequent great practical difficulties. Positivism, indeed, in so far as it treats the state as an absolute and final entity, and refuses to go below it to the individual

[1] *Ibid.*, p. 22. [2] *Ibid.*, pp. 7-8. [3] P. 303.

or beyond to humanity, has to that extent ceased to be "positive."

"NEO-NATURALISM"; PRIVATE LAW AND INTERNATIONAL LAW

This, no doubt, is the main reason why the naturalist point of view has never been wholly abandoned, particularly by American and British jurists, and why there is a modern movement toward reviving it—a movement closely connected with the question of the relation between private law and international law.

For positivists, starting with the laudable ambition to base international law on the facts of international relations and human society and eschew the arbitrariness and subjectivity of "naturalism," have themselves fallen victims to the human passion for uniformity and the absolute. A positivist system of international law would, it might be expected, be built up experimentally and inductively from the facts of international life, and its principles conceived as generalizations from these facts, subject to revision as the facts changed. Such a system, bearing in mind the fact that states are communities of men, would put human welfare as its aim, and, keeping carefully clear of theories, trace the actual relations of national communities, the historical development of these relations and the direction in which they were tending, as well as the connexion between international and other forms of law. But in the nineteenth century lawyers in the name of positivism became so enamoured of the doctrine of sovereignty that they began deducing from it what should be the principles of international law and twisting facts to fit the result.[1]

Sovereignty has been already mentioned[2] and is discussed below[3]: all that need be said in this connexion is that as almost universally presented by pre-war jurists it is not a "positive" induction from facts, but rather a philosophical abstraction, which when coupled with Hegel's God-State—a sort of incarnation of The Absolute—entered with a vengeance the very realm of mysticism, dogma, arbitrariness and subjectivity that positivists had set out to escape.

[1] *Cf.* the following remark by Dr Ezra Pound in "Philosophical Theory and International Law," *Bibliotheca Visseriana*, i., p. 75:

"The seventeenth- and eighteenth-century theory of international law grew out of and was an interpretation of the facts, whereas the nineteenth- and twentieth-century applications of that theory to the facts of the political world since the middle of the nineteenth century do not interpret and grow out of the facts, but give the facts a juristic or metaphysical cast to make them fit the theory."

[2] Pp. 119-120, 269-270.

[3] Pp. 281, 304-305, 307-313.

The consequence is, says H. Lauterpacht, that:

" The science of international law, while recognizing that it is the business of international lawyers to expound law as it is and not as it should be, is now increasingly realizing that dogmatic positivism as taught by a generation of jurists fascinated by the splendour of the doctrine of sovereignty is a barren idea, foreign both to facts and to the requirements of a scientific system of law." [1]

He adds:

" It is, perhaps, not yet sufficiently realized that the dogmatic positivism of ten years ago is no longer predominant. The renaissance of natural law is finding its way from legal philosophy and from municipal law into the domain of international law, where the influence of the new ideas was facilitated by the depressing consciousness of the inadequacy of rigid positivist method. Needless to say, it is not the old law of nature, it is rather the modern ' natural law with changing contents,' ' the sense of right,' ' the social solidarity,' or the ' engineering ' law in terms of promoting the ends of international society." [2]

In particular there is a growing tendency to discard the positivist objection to drawing any analogies between private law and international law. While admitting that such analogies have played a big part in the formation of international law, positivists tend to reject them on the ground that (*a*) sovereignty requires that only rules expressly or implicitly consented to by states through custom or treaties should be admitted as law; (*b*) the interests of states are eternal, inalienable and of a higher order than those contemplated by private law.

Lauterpacht, in the brilliant treatise already quoted, convincingly shows that it is only by legal fictions that existing states can be supposed to have consented in any shape or form to the existing body of international law, and that in particular the rule *pacta sunt servanda* is ultimately incompatible with the positivist theory.

" Rigid modern positivism as it appears in its current theoretical formulation does not furnish a suitable basis upon which a coherent system of international law can be built, and . . . positivist writers themselves are unable to follow it in their exposition of international law." [3]

To the second positivist argument he opposes the view that:

" Acts of States and of their organs are actions of men, for ordinary human purposes, governed by standards of justice and morality accepted by States and their peoples within their territories, and . . . the interests of States are only in degree different from those protected by other collective bodies or from interests of individuals." [4]

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[1] *Private Law Sources and Analogies of International Law*, p. 58. [2] *Ibid.*

[3] *Op. cit.*, p. 54.

[4] *Op. cit.*, p. 72. See also below, pp. 281-282, 284-285; and *cf.* Westlake, *Collected Papers*, p. 78: " The duties and rights of states are only the duties and rights of the men who compose them."

He points out that not only are these conclusions supported by the practice of governments, as shown particularly in arbitration cases, but that, just as older jurists, even when rejecting Roman law because it was private law, introduced it freely as the expression of "natural law," so modern positivists, while rejecting private law analogies in theory, are, in fact, bringing into international law generally recognized rules of private law under the guise of "the principles of general jurisprudence" or "universal conceptions of law." Lauterpacht argues strongly that the use of private law analogies in international law is not only inevitable, but, with certain limitations and safeguards, an eminently practicable and desirable way of developing international law, and of the greatest importance, particularly in connexion with the sources of law on which the Permanent Court can draw.[1]

In other words, the building of an insurmountable barrier between international law and other forms of law is a favourite practice of jurists calling themselves "positivists," but derives from an abstract dogmatism that is highly "unpositive," while on the other hand advocacy of the use of private law analogies in international law, although labelled "neo-naturalism," is merely a modern and consistent application of the "positive" method, based on scrupulous respect for facts.

WHERE NATURALISTS AND POSITIVISTS MEET

The naturalist and positivist schools, in spite of the different premises from which they started, found common ground in their common belief that reason must be applied to the body of usages and customs acknowledged by states as international law, in order to combine them into a system by deducing principles from the accumulation of cases, applying these principles to new circumstances and even occasionally propounding new rules to meet the changed conditions of modern life. Moreover the positivists held that equity must not be entirely excluded in the science of international law, while naturalists admit that the body of acknowledged rules and customs is the only indication of what has been done so far to apply their imagined standards of right, and that such standards must therefore, to some extent, be conceived in terms of what already exists and the possibilities to which its existence points. The two, therefore, may often agree in practice that existing law should be, so far as possible, construed in the light of whatever ethical, metaphysical or other standards may be considered the most equitable, but that it is not feasible to contend

[1] See below, p. 405.

that such standards override the accepted rules where the latter are clear. Nevertheless the confusion caused by the existence of the two schools and the ambiguity of Continental when compared with English terminology still subsists to some extent.

THE SOURCES OF INTERNATIONAL LAW

The sources in the view of the positivists, and the evidences and applications of international law in that of the naturalists, are described with slight but instructive variations by the classical writers on international law.

According to Westlake

According to Westlake [1] the two sources of international law are custom and reason—reason operating in the manner described to build up a system of jurisprudence on the materials supplied by custom, and occasionally to suggest when a new custom should be initiated or an old ignored, or what action should be taken in the absence of a guide from custom. As for custom, its evidence is to be sought in the "general consensus of opinion within the limits of European civilization" in favour of whatever rule it is contended is sanctioned by custom.

"The best evidence of the consent which makes international law is the practice of states appearing in their actions, in the treaties they conclude, and in the judgments of their prize and other courts, so far as in all these ways they have proceeded on general principles and not with a view to particular circumstances, and so far as their actions and the judgments of their courts have not been encountered by resistance or protest from other states. Even protest and resistance may be too feeble to prevent general consent being concluded from a widely extended practice. The increasing frequency of international arbitration now calls for the special mention, among the evidences of this class, of the judgments of arbitrators, particularly of such as may be given by the court established in pursuance of The Hague Convention of 1899, to which practically all states of international law are parties.

"The arguments adduced by statesmen in dispatches and other public utterances are very important as showing what were the principles proceeded on, especially in the case of treaties, which are so often concluded with a view to particular circumstances that great care must be taken in using them as evidences of international law." [2]

The practice of those states most concerned with a particular branch of international law has special authority, although it may be accompanied by the bias of special interest. The opinions of private writers must be counted towards the general consensus of opinion, particularly if the writer may be supposed to represent

[1] *International Law*, vol. i., p. 15.
[2] *Ibid.*, p. 16.

many persons besides himself. Moreover, much of international law is so well observed that the best evidence for its existence is its admission into accredited text-books, and in cases where a rule is disputed, or the changing of an old rule is suggested, the opinions of writers may help to make reason appear and prevail.

HALL

Hall [1] points out the difficulty of ascertaining whether principles and rules purporting to constitute international law can be shown to be sanctioned by the needful international agreement, since no formal code has been adopted by the body of civilized states and scarcely any principles have even separately been laid down by common consent. The most solid basis of law is authoritative international usage, by which is meant usage giving " effect to principles which represent facts of state existence essential under the conditions of modern civilized state life," as well as to " certain moral obligations which are recognized as being the source of legal rules with the same unanimity as marks opinion with respect to the facts of state existence." When, as sometimes happens, accepted principles lead logically to incompatible results, there is no way out in international law except fixing by trial and error (practice) the point where the inevitable compromise must be made. Treaties, in Hall's opinion, are of scarcely more value than any other manifestation of national will in determining what is law, since most treaties are bargains struck for the very purpose of getting away from the obligations of law between the parties in the particular case, and therefore not only useless but misleading as an indication of law. All indications of national opinion with reference to international law should be considered of substantially equal weight, and authority should in general attach to them in proportion to their number and the period during which they have been repeated, with the qualification that unanimous opinion of recent growth is a better foundation than long practice on the part of only a few of the body of civilized states, and that the usages of, for instance, the foremost maritime powers are more important in the development of maritime law than that of states weaker at sea.

AND BIRKENHEAD

Lord Birkenhead [2] divides the chief agencies by which the rules of international law are commonly ascertained into six heads—viz.

[1] *International Law*, 8th edition, p. 5.
[2] *Ibid.*, p. 23.

(i) The writings of jurists.
(ii) International treaties.
(iii) Opinions invited by their own Governments from experts in international practice.
(iv) Declarations of law made by tribunals of international arbitration.
(v) Decisions of prize courts and similar tribunals.
(vi) Private instructions given by individual States to their armed forces and to diplomatic representatives.

The writings of jurists are chiefly valuable as illustrating what authoritative opinion is as regards the existing state of the law, for their unanimity will generally coincide with at least a preponderating weight of international precedent. They have also contributed greatly to the development of the rules of international law by recalling almost forgotten precedents or by openly advocating changes which by their inherent reasonableness have afterwards procured acceptance. Treaties, apart from the extent to which they create law between signatories (so-called conventional law), have a very high value as evidence of existing law or as formative of new law when they are expressly declared to be concluded for this purpose (so-called declaratory treaties). Their influence will vary with the importance and number of the nations which sign them. Non-declaratory treaties—that is, " all conventions between individual Powers or a number of Powers falling short of a concert, to affect particularly the relations of the signatory Powers " [1]—generally show rather what the law is not than what the law is, although a long succession of such treaties between the great civilized states stipulating for the same modification of the common law may themselves show that such law is being changed and their subsequent disappearance may denote the emergence of a new rule and the lapsing of the original rule against which they were a protest. The opinions of jurists in answer to their governments are of rather one-sided value, though they may be usefully quoted against a government by an opponent which on the matter in hand is taking its stand on the rule applied by the jurist in his advice to his government on some other case, for a civilized nation could scarcely act in the teeth of its own law advisers. The value of arbitral awards is not ranked high by Lord Birkenhead in his chapter on sources, although a footnote points out that The Hague Peace Conferences, and still more the League of Nations, have extended the scope of international arbitration, and reference is made to the chapter on international arbitration in the book, where these matters are taken fully into account. As for prize

[1] Birkenhead, *ibid.*, p. 25.

courts, their decisions supply very valuable evidence of international practice, since the law they apply is not municipal but international, and by comparing the judgments of the prize courts of different countries on similar points it is often possible to arrive at positive conclusions on international law. Lastly, the practice of issuing manuals for the guidance of officers in the field, instructions to diplomatic agents, etc., furnishes valuable evidence in so far as they show general agreement on the existence of a rule and on its having made its way into international law.

Suggested New Definitions

Mr P. E. Corbett concludes an illuminating discussion on " The Sources of the Law of Nations " in the *British Yearbook of International Law for 1925* with the following four proposals for new definitions of the various ideas involved in the term " source " as applied to international law :

" 1. The cause of international law is the desire of states to have the mutual relations which their social nature renders indispensable regulated with the greatest possible rationality and uniformity.

" 2. The basis of international law as a system and of the rules of which it is composed is the consent of states.

" 3. The origins of the rules of international law, which may also be called ' the sources ' of that law—though the word ' source ' has such a history of confusion behind it that it might well be abandoned—are the opinions, decisions or acts constituting the starting-point from which their more or less gradual establishment can be traced.

" 4. The records or evidence of international law are the documents or acts proving the consent of states to its rules. Among such records or evidence, treaties and practice play an essential part, though recourse must also be had to unilateral declarations, instructions to diplomatic agents, laws and ordinances and, in a lesser degree, to the writings of authoritative jurists. Custom is merely that general practice which affords conclusive proof of a rule."

And New Conceptions

The " cause " of international law in the definition just quoted is a conception borrowed from Westlake and modified by Mr Corbett, as he explains in the following passage :

" In his *Chapters on International Law*, Westlake expresses the view that the ultimate source, in the sense of ' the cause why any rules of international law exist,' is ' the social nature of man and his material and moral surroundings.' If for ' man ' we substitute ' states ' we obtain an accurate statement of the reason why a system of binding rules is necessary and actually exists. States are as essentially social as the individual members of each. It is as impossible to conceive of a condition of complete isolation for one as for the other. They are the units of a larger community, and given the idea of a community the idea of law follows as an immediate corollary. The reason for a law between states is of precisely the same nature as the reason for a law between the citizens

of a state. Given this *reason*, we should perhaps be more exact in saying that the *cause* of international law is the desire of states to have their necessary mutual relations regulated with the greatest possible rationality and uniformity." [1]

Whereas Westlake penetrates down to the individual as the ultimate unit in society, and is inclined to treat states as merely associations of men,[2] Mr Corbett is content to push his investigations no further than the state, which he leaves in all its opaque majesty as the final entity in world affairs. But Westlake's idea is taken up in a far more drastic manner by M. Nicolas Politis,[3] who advances with a wealth of arguments and authorities the following propositions:

(1) Sovereignty and law are incompatible conceptions: either international law is not real law or the notion of sovereignty must be abandoned. Attempts to reconcile the two by theories about the "voluntary limitation" or "relative nature" of sovereignty have failed, and the prevailing tendency is now to condemn sovereignty as

"a dogma which is inadmissible because it is meaningless, and dangerous because it favours the maintenance of international anarchy. If we put sovereignty on one side in order to see the underlying reality, we perceive that the independence claimed for states is nothing but the power of moving freely within the limits fixed by law; that is, a certain particular competence possessed by governments on the basis of international law." [4]

(2) With sovereignty goes the notion of the equality and personality of states, both of which M. Politis declares to be mere legal fictions that may have been useful in the past, but are now anachronisms. With them, he says, must go the whole apparatus of fundamental rights.

"Reality shows that what is known as the will of the state is simply the will of the men who govern. . . . There are no subjective rights for states any more than there are for individuals. There are only objective rules which individuals, and individuals only, feel the necessity of obeying and which enable the legality of their acts to be discerned. This being the case we get nearer the scientific truth by dropping the phraseology about the rights and duties of states and instead indicating the objective rules which authorize or forbid such-and-such an attitude on the part of men acting as governors of a state." [5]

(3) With the ground thus cleared the cause of international as of all other law, says M. Politis, is

"the solidarity created by social needs: Within every group the existing human relationships give rise to economic and moral habits which become obligatory

[1] *Ibid.*, p. 22. [2] See below, p. 284, and above, p. 275, footnote.
[3] *Nouvelles Tendances du Droit International*, pp. 18-46. [4] *Ibid.*, p. 24.
[5] *Ibid.*, pp. 44-45. See also Lauterpacht, *op. cit.*, especially pp. 54-60, 62-63, 73-75, for a similar view—*i.e.* that there are no subjective rights of states, but only objective rules binding on governments.

rules of law so soon as the interested parties become persuaded that they must conform to them and that if they do not do so a state of mind will be produced in the other members of the group tending to the effective enforcement of these rules. . . . Law is not the emanation of an order nor the manifestation of a will; it is simply a social product, a pure fact that has become conscious; the directors of the society in which it is born confine themselves to formulating it in rules or treaties. With this conception international law has a single all-inclusive source: the juridical consciousness of the peoples, which confers an obligatory character on the economic and moral rules resulting from their solidarity." [1]

Conclusion

The opinions of the eminent authorities given above show how abundant, and at the same time confusing, vague and elastic, are the materials out of which the fabric of international law is being laboriously pieced together. "Custom" and "usage" are elastic terms, considering the different circumstances and civilizations of states, the infinitely various ways of "expressing the national will," the existence of more or less contradictory usages or customs, the nice distinctions between "questionable" and "unquestionable" usage, the difficulty of seeing where the former rises into the latter or lapses into isolated acts performed contrary to usage, the superposition on custom or usage of treaties which may be taken either to be exceptions confirming the rule or as steps to setting up a new rule, or, again, as simply declaring what is the existing rule, the fact that the only way to make a new custom is often to break the old,[2] and, finally, the fact that in all this states are always judges themselves of what is the law in their case. The only approach to solidity and clarity in all this "mush" [3] are the two modern developments, that of general treaties forming written law between the parties, and eventually if sufficiently widely adopted affecting custom, and the decisions of arbitral tribunals which, in so far as

[1] *Ibid.*, pp. 48-49.

[2] *Cf.* Professor J. L. Brierly: "We are almost forced to admit, though the conscience of jurists naturally shrinks from the admission, that the new rule of law is sometimes established by the breaking of an older one that circumstances have rendered obsolete" (*British Yearbook of International Law*, 1924).

[3] The extent of the confusion and uncertainty as to what constitutes the sources of international law is vividly brought out by the following passage from Mr Corbett in the article already quoted:

"In the treatises of the last hundred years there has been an enormous amount of writing on the sources of international law. . . .

"The student with an appetite for analysis reads and is perplexed. For divergences of opinion corresponding to differences of school he is prepared. He does not expect the naturalist and positivist to trace their principles to the same origin or to cite the same authorities. But when writers professing the same general views with regard to the nature of international law display a more or less total absence of agreement on the connotation of 'cause,' 'origin,' source,' and 'evidence' in the application of these words to their science, he experiences a certain surprise. That surprise is the more justified in that, as he presently discovers, the confusion extends to such fundamental matters as, for example, the relation of custom and treaties to law" (*British Yearbook of International Law*, 1925, p. 20).

they approximate to judicial procedure and are consistent with each other, give an impartial and authoritative expression of what is the existing law on the points at issue.[1]

THE SUBJECTS OF INTERNATIONAL LAW

States

(a) *Their Definition*

Originally and in the classic theory of international law the subjects of or persons in international law are states. Westlake says :

> " A state is the largest and highest and most comprehensive unit in which law and authority are applied to individual men by courts of justice and officers of government. The duty of an individual to answer for his actions and to obey is enforced by a scale of courts and authorities ascending to the highest British, French or other, and there it stops. There is no international court or authority to which an individual is responsible." [2]

States supreme over their subjects are states proper, and states which, in addition to being supreme over their subjects, have relations with other states, such as peace, war, treaties, arbitrations and so forth, are states of international law. Political communities which have only partial authority over their members are not, properly speaking, states at all. Thus the original thirteen American colonies, after they became independent from Great Britain, were states of international law, but since, by the terms of their union, they lost complete supremacy at home, the name of state is merely an historic title which has been extended as a compliment to the other states of the Union, and even to the different parts of the Australian Commonwealth, which were never states either historically or in any other sense.

(b) *Classification*

Even in Westlake's day the position was not so simple as this definition might imply. In addition to independent or sovereign states there were states which were dependent or semi-sovereign, such as protectorates and protected states and so-called suzerain and vassal states—terms which Westlake deprecates as being loose and inaccurate—also neutralized states, personal, real and incorporate unions of states, federations, by which is apparently meant what are generally called confederations of states (Staatenbund), federal states (Bundesstaat) and " marginal " states, half in and half out of the community of nations governed by international law, such as Oriental states subject to capitulations or the system of

[1] See below, p. 417.

[2] *Ibid.*, p. 1.

foreign concessions and consular jurisdiction. It is not always easy to fix the precise relationship of all these political groupings to each other and to international law, particularly in view of the theory that

" for every part of the population and territory of the civilized world the full powers of a sovereign state must exist in some quarter. That must be so, not only for the benefit of the population and territory in question, but also for that of the rest of the world. Foreign states must be able to find some ultimate depository of power with which to deal for the settlement of the affairs that may interest them in connexion with the given region, whether in seeking redress for wrongs or in making international arrangements. Therefore whatever elements of external sovereignty an inferior state may lack must belong to its superior, whether that be a single state controlling its foreign relations or a federal body limiting them." [1]

In modern times there have been added to these categories the peculiar status of Egypt, the relations of the United States to Cuba, Panama, San Domingo, Haiti and Nicaragua, which are all in varying degrees under American control, the position of the Dominions, and that of mandated territories.

Public International Unions

At the same time permanent interstate machinery for special purposes—*i.e.* our old friends the public international unions [2]; *Zweckverbände* is the neat German name—became more numerous and important, and so international law was forced to take cognizance of their existence and they were—albeit gradually—admitted as persons in international law.[3]

Other Collective Bodies

From this it was a small step to recognizing that where such unions contained a mixture of private and state interests, such as, for instance, in the International Union of Railway Administrations, or even a combination of great private interests only, as some of the big international shipping or telegraph companies, they had the same importance in fact, and were entitled to the same international personality, as the so-called public unions.

The Ultra-Modern School

To-day there is an ultra-modern school among writers on international law [4] which contends that international law should take cognizance also of the relations of individuals both to each other and to states. If this thesis were admitted it would overturn the

[1] Westlake, *ibid.*, p. 22.
[2] See above, p. 26.
[3] See Schücking and Wehberg, *Die Satzung des Völkerbundes*, 2nd edition, p. 104, and Woolf, *International Government*, p. 100.
[4] *E.g.* Nicolas Politis, *Nouvelles Tendances du Droit International*, especially chapter two; also Lauterpacht, *op. cit.*, *passim.*

foundations of the classic international law, abolish the distinction between public and private international law, and make nonsense of most of the definitions of state sovereignty and even of the state itself, such as that from Westlake quoted above.[1] At the same time there are such powerful economic, political and moral tendencies urging the world forward in the direction indicated that it would take a bold man to assert that the views of this school would never be realized, or even to fix the date of their realization at a period so remote as to be of no interest to our generation.

THE SETTLEMENT OF DISPUTES AND INTERNATIONAL LAW

Closely connected not only with the development of international law, but with the question of its nature, is that of how it is interpreted and applied when there are differences of opinion as to its meaning. This in practice means how disputes are settled between states. It is obvious that so long as the interested parties remain the sole judges of what is the law in any matter with which they are concerned the very term " law " must be understood in a somewhat Pickwickian sense.

States Judges in their Own Cases

Nevertheless this is the normal condition :

" The maxim '*Nemo potest judex esse in re sua*' has no place in the law of nations, and the interested nation itself decides on the extent of provocation and imminence of peril,"

remarks Lord Birkenhead,[2] and immediately adds that,

" under these circumstances it is not surprising that the line between policy and law is slightly drawn, [and that] in several topics of international law jurisprudence and politics are very closely related."

Negotiation

In the circumstances negotiation is the first and inevitable step in the case of a difference between parties—in other words, the difference must begin by one party disagreeing with the other and a discussion then arising. This would seem as obvious as the discovery of the man who found he had been talking prose all his life, but negotiation is nevertheless enumerated in books on international law as " an international institution," and defined as

" such acts of intercourse between the parties as are intended and directed for the purpose of effecting an understanding and thereby amicably settling the difference that has arisen between them." [3]

[1] P. 283. [2] *Ibid.*, p. 79.
[3] Oppenheim's *International Law*, 4th edition, edited by Professor A. D. McNair, vol. ii., p. 7.

COMMISSIONS OF INQUIRY

A principal difficulty in negotiation often is to arrive at an agreement as to the nature of the facts over which disagreement has arisen, and for this purpose commissions of inquiry often have been found a useful adjunct by the parties. The sole purpose of these commissions is to ascertain in an impartial and therefore authoritative manner just what the facts of the situation or incident, or whatever it may be, are and so report to the parties.

CONCILIATION

From this it is a small step to entrust a commission, appointed jointly by the two parties and therefore possessing a certain moral authority, not only with finding what are the facts but suggesting some kind of solution. The parties are not, of course, bound to accept the conciliation commission's proposals, but the latter may nevertheless afford a basis for negotiation leading to a solution.

GOOD OFFICES AND MEDIATION

So far the procedure outlined has resulted directly from negotiations between the two parties without the intervention of outside states. It may, however, happen that a state not involved in the dispute, but on good terms with both the parties, may offer its good offices, either to transmit the proposals of one party to the other where negotiations have been broken off and the two are not on speaking terms, or in any other action " tending to call negotiations between the conflicting states into existence." [1] Such action on the part of an outside state or group of outside states may in turn develop into mediation, by which is meant " direct conduct of negotiations between the parties at issue on the basis of proposals made by the mediator." [1] Thus states tendering their good offices give advice to the parties, act as go-betweens in transmitting proposals or helping on the resumption of negotiations, but take no part themselves in the negotiations, whereas a mediator is a middleman who does take part and, indeed, supplies the basis of the negotiations by proposals of his own, and may conduct the negotiations himself. Both good offices and mediation may be offered during the early stages of a dispute or after the two parties are actually at war.

INTERVENTION

So far we have dealt only with negotiations facilitated by machinery set up by the parties or the friendly services of other states. The rest of the community of nations, or some part of them, may, however, feel so annoyed at the prospect of what appears

[1] Oppenheim, *ibid.*, pp. 10 and 11.

to them a foolish or trivial dispute leading to war, and so seriously affecting the interests of other states which have nothing to do with the causes of the quarrel, that they may interfere sharply. Such interference is then called intervention and defined as the

" dictatorial interference of a third state in a difference between two states, for the purpose of settling the difference in the way demanded by the intervening state. This dictatorial interference takes place for the purpose of exercising compulsion upon one or both of the parties in conflict, and must be distinguished from such an attitude of a state as makes it a party to the conflict. . . . A state intervening in a dispute between two other states does not become a party to their dispute, but is the author of a new imbroglio because it dictatorially requests those other states to settle their differences in a way to which both or at any rate one of them objects. An intervention, for instance, takes place when, although two states in conflict have made up their minds to fight it out in war, a third state dictatorially requests them to settle their dispute through arbitration." [1]

Intervention of this sort can take place at any time in a conflict, either when it is still in the stage of a mere dispute, after it has degenerated into war, or even during the subsequent peace settlement.

Intervention in this sense is justified by Westlake [2] on the ground that :

" When the relations between any two or more states have either passed into war or reached a degree of tension clearly threatening war, to deny the right of any state to intervene in support of justice would be to deny the existence of an international society. When an analogous situation exists between individuals in a nation provided with a police, if the police are not present, as they cannot always be, it is both the right and the duty of bystanders to put an end to a brawl or to intercept a blow by which a brawl would be commenced. Still more must this be at least a right among states not provided with a police, but having commercial and other interests unavoidably affected by a war in any part of the world, while it commonly happens that several of them have also separate interests connected with the quarrel or with the way in which it may be settled."

The question of compulsion by some states against others is further discussed below,[3] and in Volume II. What is pertinent to note here is that all the proceedings for the settlement of disputes hitherto described, although included in text-books on international law and obviously germane to the development of the practices of nations out of which international law grows, are really only the technique of self-help elaborated by devices between

[1] Oppenheim, *ibid.*, pp. 98-100.

[2] *Op. cit.*, vol. i., pp. 317-318. *Cf.* also Hall, *op. cit.*, pp. 65-66, for a similar view.

[3] See pp. 295-301.

the parties and tempered by the limits of the community's patience or overridden by its insistence.

ARBITRATION

More directly relevant to the development of judicial methods and standards in international relations is the practice of arbitration, by which is meant " the determination of differences between states through the decision of one or more umpires or of a court chosen by the parties." [1]

In a fascinating little book [2] that brilliant international jurist and supple Greek politician, M. Nicolas Politis, has traced the history of the development of arbitration and its merging into judicial settlement, and compared this process with the development of courts of law in national societies. In such societies, he says, the first step was an attempt to regulate the use of force by private individuals in imposing their claims—that is, to surround blood feuds and the right of vengeance with certain procedure. The second step was to set up machinery by which disputants could, if they wished, settle their differences peacefully, a procedure encouraged by the community, since disorder and violence was not in its interest. The third step was to make reference to this machinery obligatory and so reduce the primitive freedom of the parties to themselves enforcing the verdicts given by the public authorities. After this society itself undertook to enforce its verdicts through its own agents, and finally reserved the right to prosecute in penal questions where public rather than private interests were injured.

(a) *Antiquity*

In international society arbitration has been known since the earliest history, but its origins in Western civilization must be sought first in the Greek city-states. Rome did not recognize arbitration, as it did not recognize the equality of other communities. During the Middle Ages there was first a relapse into something like anarchy and afterwards a system of more or less loose and confused hierarchies within hierarchies, civil and ecclesiastical, feudal, professional (guilds), etc. The reference to some higher hierarchical authority for settlement of differences between two inferiors was frequent, but differed considerably from the modern practice. These arbitrations practically disappeared between the sixteenth and eighteenth centuries, for Europe had by that time practically crystallized into a few great absolute

[1] Oppenheim, *ibid.*, p. 24.
[2] *La Justice internationale*, Librairie Hachette, 1924.

monarchies, which did not recognize any superior and to whom the idea of arbitration was repugnant, since it was held that justice was a royal prerogative, one of the principal attributes of sovereignty and the most practical manifestation of the supreme power. Consequently, the intervention of an arbiter between states was considered as something extraordinary and shocking, for it would imply that the arbiter was a suzerain, and this was highly offensive to the pride of states and to their feeling of independence.

(b) *The American and French Revolutions*

At the end of the eighteenth century the French and the American revolutions contributed to the formation of a new tradition. The French Revolution launched the idea that sovereignty was invested in the people and justice the final sanction of liberty, since it ensured the triumph of law, which was the basis of liberty. With this was the idea of fraternity, and the three together made it appear logical and natural that international relations should be based on law and governed by justice. As for the American Revolution, it left a legacy of important questions pending between Great Britain and America, which these countries, by the so-called Jay Treaties, submitted to a mixed commission composed of an equal number of Americans and British, with a chairman approved by both. The success of this experiment led to the idea being imitated elsewhere in a Europe which had been prepared for these new methods by the spirit of the French Revolution.

(c) *The Habit grows*

The subject was taken up by peace societies in all countries, which popularized the idea of arbitration as an alternative to war, and as the number of arbitrations increased information about them began to be gathered and analysed and the practices of arbitration became, to some extent, standardized. The differences between commissions of inquiry, conciliation commissions and arbitral tribunals became clearer and more sharply defined, and the procedure governing reference to and appointment of each, and the conduct of their proceedings, became more nearly uniform.

These practices were collated and to some extent codified in a regulation comprising twenty-seven articles published by the Institute of International Law in 1875.

THE HAGUE CONFERENCES

The next step was the summoning of The Hague Peace Conferences of 1899 and 1907, which were convened on the

initiative of Russia and attended by twenty-six and forty-four states respectively.

" The original aim was to bring about progressive reduction of armaments. But it was soon realized to what an extent this idea was premature; its realization presupposed an atmosphere of order, confidence and legality; instead of being the cause of peace it could only be the consequence of peace. Therefore, after confining themselves to platonic resolutions on this subject, the Peace Conferences addressed themselves to regulating the use of force and facilitating the practice of arbitration." [1]

Thus as early as 1899, and again at the Second Peace Conference in 1907, the connexion between disarmament on the one hand and peaceful settlement of disputes and a sense of security on the other was realized.[2] The Hague Conferences of 1899 and 1907, the latter attended by forty-four states, drew up a convention on the peaceful settlement of disputes, in which the contracting parties declared their desire to settle disputes peacefully and established procedure for commissions of inquiry, conciliation, good offices, mediation and arbitration tribunals. The procedure was based on the code drawn up by the Institute of International Law a quarter of a century earlier, with a certain amount of clarification and amplification.

(a) *Inquiry and Conciliation in The Hague Convention*

As regards commissions of inquiry it was said that

" in disputes of an international nature, involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation." [3]

These commissions, like those for conciliation and arbitral tribunals, should be set up by the parties on the basis of a special agreement (*compromis*) defining the facts to be examined, the composition, powers, functions and procedure of the commission, and any other conditions considered necessary.

(b) *Good Offices and Mediation in the Convention*

As for good offices and mediation, the Convention, in addition

[1] Politis, *ibid.*, p. 96.

[2] For further consideration of this connexion see Volume II.

[3] Article 9 of The Hague Convention on the " Peaceful Settlement of International Disputes." The Convention does not specifically provide for conciliation commissions, but in the most conspicuous case in which a commission of inquiry was set up under the Convention (namely, the Dogger Bank incident between Russia and Great Britain) the commission of inquiry made recommendations and acted in fact as a conciliation commission.

to pledging the parties to do all in their power to ensure the pacific settlement of international disputes and resort, when possible, to the good offices or mediation of friendly Powers, defines so far as possible the duties of a mediator or state offering good offices, declares that, under the Convention, states have not the right to be offended in the case of an offer of this sort, and makes it perfectly clear that the function of a mediator is purely advisory. A curious arrangement is proposed by which two conflicting states not on speaking terms with each other may each choose an umpire, and the two umpires can conduct negotiations with each other for the purpose of finding a basis on which relations may be resumed between the conflicting states. The Convention also goes out of its way to make clear that the acceptance of mediation or good offices shall not in any way affect the process of mobilization or otherwise preparing for war, or interrupt military operations after the outbreak of war before the acceptance of mediation, failing agreement to the contrary.

(c) *Arbitration in the Convention*

As regards arbitration it was provided that

"international arbitration has for its object the settlement of disputes between states by judges of their own choice and on the basis of respect for law. Recourse to arbitration implies an engagement to submit in good faith to the award."

The forms of arbitration, the nature of the *compromis* or special agreement on which recourse to arbitration must be based, providing for the choice of arbiters, their powers, the terms of reference to them, the procedure by which the case should be conducted, etc., were all defined, and general procedure laid down which could be adopted by states as the basis for their *compromis* and could be used by arbiters as a guide on points where the *compromis* might prove obscure. A system was provided by which institutes of law and similar bodies in different countries should each designate four arbiters to serve on a panel from which states might choose a tribunal to adjudicate on their case according to the regulations provided by The Hague Convention or on the basis of a *compromis*. A permanent office with a secretary was provided, as well as a large and handsome peace palace, provided by the munificence of Mr Carnegie, and the whole called by the somewhat ambitious name of the Permanent Court of Arbitration. A project for setting up a real court with a small permanent staff of judges acting by strictly judicial procedure was exhaustively discussed at The Second Hague Conference, and draft statutes drawn up, but the attempt broke down because of the insistence of the

small Powers on their absolute equality according to the theory of sovereignty. As a court in which every state appointed a judge of its own nationality would be too bulky a body, and too much influenced by national and political considerations to command confidence as a legal authority or be practicable in working, and as the small Powers would not concede the claims of the great Powers to have judges of their own nationality on the court and let a certain contingent of the others be elected by the remaining states or through The Hague panel of arbiters or in some other way,[1] the projected court broke down.

(d) *The Failure to limit Sovereignty*

A subject discussed at enormous length at The Hague conferences was that of instituting obligatory arbitration for some subjects, but the attempt failed. It was generally agreed that so-called legal questions (*questions juridiques*) defined as those " relating to the interpretation and application of international agreements " might be " submitted to compulsory arbitration without any restriction." Indirectly, by recognizing that force should not be employed for the recovery of contract debts unless the state against which the claim was made refused arbitration, it was recognized that this subject was a matter for compulsory arbitration. In this case, however, the unwillingness of the United States to see force employed by European states in collecting debts from Latin American countries helped the members of the Conference to arrive at this decision. Any nearer approach to compulsory arbitration was rendered impossible by the obsession with so-called questions of honour and vital interests, on which it was laid down as a dogma that states could not possibly bind themselves to arbitration. At one time a majority of the Conference got as far as defining seven subjects relating to the interpretation and application of treaties which they would have been willing to refer to obligatory arbitration, but, as Mr Woolf[2] pungently remarks,

" even if practical effect had been given to this willingness it is doubtful whether the cause of peace would have been materially advanced. One imagines that there must have been someone at the Conference possessed of a cultivated sense of irony and cynicism to choose as subjects for obligatory arbitration the interests of indigent sick persons, of the working classes, of dead sailors, or writers and artists. We shall be too near the millennium to need any but a Celestial Authority when the Foreign Offices of the world think sufficiently

[1] There were three main schemes, see Woolf, *International Government*.
[2] *Ibid.*, p. 50.

about the interests of such persons for the Third Secretary of an Embassy even to remember that they exist. Meanwhile, it is hardly necessary to take steps to prevent our rulers mobilizing fleets and armies on their behalf. If the interests had been those of capitalists and financiers, syndicates and concessionnaires, our conclusion might have been different, but the diplomatists at The Hague were silent as regards such persons."

In the upshot the Conference got itself beautifully involved in honour and vital interests, which muddled up all distinctions between legal and political questions, and any other distinctions that it attempted to establish, since each state was to remain judge itself of what constituted honour or vital interests. The situation was tersely summed up by the remark of one member of the Conference, that any question may affect the honour and vital interests of a nation, and of another, that you can never tell when a legal question is going to become a political question.

Thus The Hague Conference defined procedure for the various forms of peaceful settlement, and set up machinery, somewhat cumbrous and costly, it is true,[1] but a vast improvement on what had existed before, for those who wished to arbitrate, but did not succeed in imposing any sort of obligation to resort to this machinery.

The Bryan Cooling-Off Treaties

Subsequently, in the United States, Bryan, as Secretary of State, concluded a great number of so-called "cooling-off" treaties, by which permanent commissions of inquiry were set up that could examine all questions without any distinction between honour and vital interests and others, and should report within a year, the contracting states undertaking not to go to war during that time.[2] The commissions were to come into operation the moment diplomatic methods had failed to adjust a dispute, and their composition was provided for in the treaty. They might themselves by unanimous agreement offer their services in a dispute, even before the breakdown of negotiations compelled the parties to refer to the commission. The Bryan treaties were concluded for five years only, but renewable after that date unless denounced by one party, and some of them are still in operation.

Present Value of The Hague Convention

As to The Hague conventions, their value is estimated very variously. Thus Oppenheim[3] considers The Hague conventions

[1] See below, p. 418, footnote.

[2] These treaties are often called the Bryan arbitration treaties, but they do not, of course, provide for arbitration.

[3] *Op. cit.*, pp. 33 and 41.

have gained a new importance by the prominence given to arbitration in the League Covenant, and adds :

" It must not be thought that the Permanent Court of Arbitration has been superseded by the Permanent Court of International Justice. . . . The two instruments are at work side by side, and are likely so to continue, at any rate so long as there are States which are parties to the constitution of the Court of Arbitration which have not yet adopted the Statute of the Court of Justice —for instance, the United States of America."

On the other hand, Lord Birkenhead [1] remarks in a footnote,

" the provisions of these conventions [for the pacific settlement of international disputes] . . . have lost almost all active importance as existing law, though there may still be occasions when they can be called into use, but they are retained as a significant milestone on the road to international peace and as forming an instructive comparison with corresponding provisions governing the Permanent Court of International Justice." [2]

Conclusion

Thus before the war a considerable variety of machinery had been devised for settling disputes, but with the exception of the Bryan treaties there was not the slightest infringement on the right of states to make war if and when they liked in preference to using this machinery, and even the Bryan treaties were only bilateral, and so could be violated at the discretion of either party without the affair becoming in any way the concern of the community of nations.

THE NATURE OF INTERNATIONAL LAW

After passing rapidly in review the origin, sources and subjects of international law, as well as the growth of arbitration and its effect on developing the concept of law in international relations, it becomes necessary to consider the nature of international law. The text-books divide this subject into two—namely, international law in peace and in war.

In Peace

International law in peace time, even before the war, was concerned with a vast number of topics, such as the coming into existence, rights and duties, changes in, different kinds and extinction of states (right of self-preservation and development, right of intervention, recognition, modes and conditions of the relations of a new or changed state to contracts and obligations from the preceding community occupying the same or part of the same

[1] *Op. cit.*, p. 154.

[2] See also the discussion below, pp. 418-419, on the relations between The Hague Court of Arbitration and the Permanent Court of International Justice.

territory, the definition of rights and procedure in establishing boundaries and title to same, etc.) ; territorial and non-territorial property of states (modes of acquiring and relinquishing same, rights of navigation, territorial waters and high seas, public vessels of states and private vessels or goods of their nationals); the status, privileges, immunities, rights and duties of sovereigns or heads of states; or of the administrative, naval, military and diplomatic agents of states, extradition, the determining of nationality (*jus soli*, *jus sanguinis*, naturalization, the nationality of married women or of children of mixed parents, whether legitimate or illegitimate, etc.); treaties (credentials and full powers of those who conclude them, procedure, methods for their framing, signature, ratification, execution, extinction, renewal or modification); procedure for the peaceful settlement of differences, a vast volume of technical rules [1] based on general conventions concerning public health, traffic by rail, road, water and air, postal, telegraphic, telephonic and wireless communications, etc.

It is enough to run through the table of contents of any standard text-book to realize how wide is the field and how numerous and complex are the topics covered by international law.

Compulsion short of War

The classic treatises on international law all describe a class of measures of compulsion falling short of war which are generally regarded as occupying a kind of no-man's-land between peace and war. Oppenheim [2] says that

> " compulsive means of settlement of differences are measures containing a certain amount of compulsion taken by a state for the purpose of making another state consent to such settlement of a difference as is required by the former."

Such measures, he says, must be sharply distinguished from war on the following grounds :

> " (1) Although compulsive means ' frequently consist of harmful measures, they are not considered as acts of war, either by the conflicting States or by other States, and consequently all relations of peace, such as diplomatic and commercial intercourse, the execution of treaties, and the like, remain undisturbed. Compulsive means are in theory and practice considered peaceable, although not amicable, means of settling international differences.' " [3]

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[1] These technical rules are only grudgingly if at all admitted as law by the classic text-books. It is difficult to see any good reason for this, except the obvious one that most of these developments are recent, while the text-books were written a long time ago and have never been properly revised.

[2] *Op. cit.*, p. 79.

[3] *Ibid.*, p. 80.

In a footnote the author, however, remarks that compulsive means are not considered as acts of war

"subject to the option which the State against whom such compulsive measures are employed has to treat them as constituting war."

But this refers to a remark made later (p. 116)—namely, that

"unilateral acts of force performed by one State against another without a previous declaration of war may be a cause of the outbreak of war, but are not war in themselves, so long as they are not answered by similar hostile acts by the other side, or at least by a declaration of the other side that it considers them to be acts of war. Thus it comes about that acts of force performed by one State against another by way of reprisal, or during a pacific blockade in the case of an intervention, are not necessarily acts initiating war."

This coincides with the distinction made in the discussions on the League Covenant, particularly at the Second Assembly, between the commission of an act of war (what Oppenheim calls an "act of force"), as defined by Article XVI. of the Covenant, and a state of war (Oppenheim's "act of war"). The view emphasized in this discussion was that the commission of an act of war did not *ipso facto* institute a state of war, which could arise only if the other party chose to treat the act as constituting war. The same distinction, which as we shall see below is of great importance, is made by Westlake,[1] who remarks that war is a state or condition of governments contending by force, and

"as such war is not set up by any mere act of force, whether an act of reprisal, embargo or pacific blockade, or an act of self-defence, or one of unlawful violence. It can be set up only by the will to do so, but that will may be unilateral because the state of peace requires the concurrent wills of two governments to live together in it, and is replaced by the state of war as soon as one of those wills is withdrawn . . . acts of force are not war unless either a government does them with the intent of war or the government against which they are done elects to treat them as war. Thus, for example, a pacific blockade may continue long and come to an end without there ever having been war."

"(2) Compulsive means [continues Oppenheim], even at their worst, are confined to the application of certain harmful measures only, whereas belligerents in war may apply any amount and any kind of force, with the exception only of those methods forbidden by International Law.[2]

"(3) It is characteristic of compulsive means that a State which has succeeded in compelling another to declare that it is ready to settle the difference in the manner desired must cease to apply them; whereas, war once broken out, a belligerent is not obliged to lay down arms if and when the other belligerent is ready to comply with the request made before the war. As war is the *ultima ratio* between States, the victorious belligerent is not legally prevented from imposing upon the defeated foe any conditions he likes."

[1] *Op. cit.*, Part II., p. 2.

[2] *Ibid.*, p. 80. As will be seen below (pp. 316, 319-321), the exception has not much meaning.

(a) *Retorsion*

The books on international law distinguish four principal compulsive means—known as retorsion, reprisals, intervention and pacific blockade. There is a certain amount of difference as to the way these methods are classified and described. The fourth edition of Oppenheim's *International Law*, as containing the most recent, detailed and precise definitions, is here adopted as the standard for the purpose of description.

According to Oppenheim, then, retorsion is

" retaliation for discourteous, for unkind or unfair and inequitable acts by acts of the same or a similar kind." [1]

That is, a state may take action, such as tariff discrimination or the exclusion of certain products from a particular country, which, while within its legal rights, is looked upon by the state against which these measures are taken as unfriendly. The latter can then retaliate by what it considers an equivalent act of discourtesy or unfriendliness.

(b) *Reprisals*

Reprisals, on the other hand, are

" such injurious and otherwise internationally illegal acts of one State against another as are exceptionally permitted for the purpose of compelling the latter to consent to a satisfactory settlement of a difference created by its own international delinquency." [2]

That is, whereas retorsion is performing unfriendly but not illegal acts similar to those complained of, reprisals are admittedly illegal acts of any nature whatever committed by a state against another which it considers has acted illegally to its injury.

(c) *Intervention*

Intervention has already been dealt with above [3] when it meant a state or group of states forcing two belligerents, or would-be belligerents, to resort to peaceful settlement, or adopt a certain solution after a war. Intervention in this sense grows out of and is an extension of good offices and mediation, and from this point of view may be distinguished from the exaggerated forms of self-help of which retorsion and reprisals are examples. But there is a kind of intervention which is also primarily a form of self-help—namely, when a state or group of states imposes its will on a single state for dynastic or religious motives (which must now be regarded as obsolete) at the invitation of one side in a civil war, to help an oppressed people against a tyrannous sovereign or a sovereign

[1] *Ibid.*, p. 81. [2] *Ibid.*, p. 84. [3] Pp. 286-287.

against his rebellious people, to oppose intervention by other states, or acts wrong in international law, to protect the interests of foreign states in the territory of a state that has fallen into a condition of anarchy, or on the broad ground of self-preservation, which has at one time or another been invoked to cover all the reasons enumerated, besides many others.

The general, if not universal, tendency of modern jurists is to rule out as illegitimate all motives for intervention except self-preservation, and to interpret the exception in as restrictive a sense as possible. The doctrine of self-preservation is examined below,[1] so there is no need to say more of it in this connexion, except to point out that the logical result of treating sovereignty as a dogma is to make the right of self-preservation primordial and leave its interpretation and application to the states alleging this motive for whatever action they choose to take. The result of this again is to make sovereignty itself unsafe, for any state may consider that its "self-preservation" necessitates interfering with the sovereignty of another state. Such interference is then called intervention. Of it Birkenhead says:

"International law is at its weakest, and its writers are least convincing, on the subject of intervention; the main reason for this being perhaps because the question appertains more to the sphere of politics than to that of the law of nations,—for in several topics of international law, jurisprudence and politics are very closely related. The maxim, *Nemo potest judex esse in re sua*, has no place in the law of nations, and the interested nation itself decides on the extent of provocation, and the imminence of peril. Under these circumstances it is not surprising that the line between policy and law is slightly drawn, so that high-handed acts of aggression have been able to masquerade under the name of intervention. The danger of a rule is apparent which would permit one nation to interfere in the concerns of another in order to prevent the wrongful intervention of a third, being itself the only judge of the likelihood of such intervention and of its moral or legal justifications."[2]

Intervention, indeed, has been the doctrine invoked for all the most questionable practices of states, from the doings of the so-called Holy Alliance to British, French, German and Japanese Imperialism in Asia and Africa, the unofficial war on Russia in 1918 and 1919, and the support of the American dollar by American bayonets in Nicaragua and other Latin American states.[3]

These abuses and dangers of single-power intervention have led to a dawning though by no means clear and universal recognition

[1] Pp. 309-313.
[2] *Op. cit.*, pp. 78-79.
[3] See below, p. 333, footnote.

that intervention by a group of states is generally less objectionable than that of a single state.[1] Thus Hall, although doubtfully, admits that:

"A somewhat wider range of intervention than that which is possessed by individual States may perhaps be conceded to the body of States or to some of them acting for the whole in good faith with sufficient warrant. . . . There must always be a likelihood that Powers with divergent individual interests acting in common will prefer the general good to the selfish objects of a particular State. . . . There is fair reason consequently for hoping that intervention by or under the sanction of the body of States on grounds forbidden to single States may be useful, and even beneficent. Still, from the point of view of law, it has always to be remembered that States so intervening are going beyond their legal powers. Their excuse or their justification can only be a moral one."[2]

Birkenhead reduces the legitimate grounds for intervention to two—namely, self-preservation and action by the general body of Powers. Of the latter he says that it is permissible

"when undertaken by the general body of civilized States in the interests of general order. This ground of intervention is often ignored by writers who acknowledge much more disputable justifications. No writer who derives his views of law from the practice of States, and not from theoretic reasoning, can refuse to admit it. It has been repeatedly asserted, and its exercise has not been questioned during the past century. The international birth of Greece in 1832 was the result of a European intervention in the affairs of Turkey; the petulant childhood of the kingdom thus called into existence was systematically regulated by the Concert of Europe, and under the same tutelage Greece has received periodic accessions of territory at the expense of Turkey. By a similar exercise of jurisdiction the independence of Belgium was extorted by the Great Powers in 1839 from the King of Holland; and in 1878 a conditional independence was bestowed upon Montenegro, Rumania and Serbia. On each of these occasions the act was clearly one of intervention; the jurisdiction is thus established in practice, and is not objectionable in theory. Unanimity of the Great Powers is the best guarantee against individual self-seeking."[3]

He adds, apparently as a special case of this type of intervention, that

"intervention conformably to the rights and obligations established by collective treaties of guarantee, and also for the purpose of safeguarding or vindicating general international law, is clearly defensible; indeed it becomes in such circumstances an indefeasible duty."

The idea that appears more or less clearly in these various opinions is that intervention becomes less objectionable the further

[1] This, however, is far from always being the case, as witness the actions of the Holy Alliance and intervention in Russia mentioned above, not to mention the looting of Peking after the Boxer Rising. There is no reason why a group of Great Powers should not simply pool their imperialisms, and this, in fact, is what has occurred on many occasions.

[2] *Op. cit.*, pp. 347-348.

[3] *Op. cit.*, p. 87.

it is removed from being a form of self-help, and the nearer it approximates to action by a body of Powers representing the whole community of nations and proceeding on the basis of treaty obligations accepted by all concerned.

(d) *Pacific Blockade*

This idea appears even more distinctly in the various comments of writers on international law concerning the modern doctrine of pacific blockade, which grew up in the nineteenth century. In this case a blockade is applied in peace time as a measure of compulsion. The shipping of the "quasi-enemy" is stopped and, if necessary, sequestered, but not confiscated, while that of "quasi-neutrals," it is generally held, should not be interfered with, though here, too, sequestration is sometimes considered legitimate. In general, practice has varied somewhat as regards the severity and nature of a pacific blockade, but the weight of opinion seems to be against anything more than sequestration of shipping and property, which is returned at the end of the blockade even to the "quasi-enemy," let alone the "quasi-neutrals," if they have been interfered with. Hall writes:

"... pacific blockade, like every other practice, may be abused. But, subject to the limitation that it shall be felt only by the blockaded country, it is a convenient practice; it is a mild one in its effects even upon that country, and it may sometimes be of use as a measure of international police when hostile action would be inappropriate, and no action less stringent would be effective." [1]

Westlake remarks that:

"The argument which has prevailed in favour of pacific blockade as against the quasi-enemy, and which is urged in its favour up to the point of sequestration as against quasi-neutrals, is that it is a milder remedy than war; but it increases the power of the strong over the weak, and by confusing the bounds of the use of force in time of peace it impairs the certainty which is so important in international relations. The best case for it is when it is employed by the Great Powers collectively in their new and growing character of the legislature of Europe." [2]

Oppenheim considers that the institution of pacific blockade is of great value, because

"Every measure which is suitable and calculated to prevent the outbreak of war must be welcomed, and experience shows that pacific blockade, although not universally successful, is a measure of this kind. That it can give, and has in the past given, occasion for abuse in the case of a difference between a strong and a weak Power, is no argument against it, as the same is valid with regard to reprisals and intervention in general, and even to war. And although it is

[1] *Op. cit.*, p. 441.
[2] *Op. cit.*, vol. ii., p. 18.

naturally a measure which will scarcely be made use of in the case of a difference between two powerful naval States, it might nevertheless find application with success against a powerful naval State if exercised by the united navies of several Powers." [1]

Leonard Woolf, in his remarkable study of *International Government*, points out that:

"When the three Powers blockaded the Greek coast in 1827 in order to enforce the decisions of their conferences, for the first time in history we hear of a pacific blockade, and even when they destroyed her fleet they denied that they were at war with Turkey. The fact is that, though they never said so, they unconsciously regarded their conferences as a kind of committee upon which had devolved the legislative power of a larger European organ. A blockade and a naval action between isolated sovereign Powers involves war, whether some of them call themselves mediators or anything else. But if the decisions of an international conference are binding upon the nations of Europe, then a blockade, or even a naval massacre, to enforce those decisions, undertaken in the name of Europe, can reasonably be called pacific. . . . There is a real difference between a nation enforcing its own will by violence and one enforcing the will of an international authority by violence. It is the difference between a hooligan and a policeman." [2]

In War

Westlake's definition of war as a state or condition of governments contending by force has already been quoted. To this may be added the idea expressed, *e.g.*, by Birkenhead,[3] that war is the final arbitrament, the *ultima ratio* in the disputes of nations, and as such merges the points previously at issue in the decision reached by force of arms.

In all the classic treatises on international law, the legal nature and effects of war, as well as the laws of war, are treated as simply a separate branch of the subject of international law, differing perhaps in degree, but not in kind, from the rest of the topic. It will be contended below [4] that this is a fundamental error, and that in fact the laws of war cannot be considered as law even in the restricted sense in which that term is used when applied to international law, and that the legitimacy of war is ultimately incompatible with any jural conception of international relations. But here we are concerned merely with describing what are the subjects covered by international law. These subjects in the domain of war are the so-called laws of war, by which is meant, first, the definition of war, causes, kinds and ends of war; then the outbreak of war, status of a belligerent, the laws governing the conduct of regular armies, navies and air forces, irregular forces,

[1] *Op. cit.*, p. 98. "Even to war" is good.
[2] Pp. 30-31.
[3] *Op. cit.*, p. 187.
[4] Pp. 319-321.

deserters and traitors, enemy character of goods and vessels, blockade, treatment of prisoners, wounded and sick, and of the dead, appropriation and utilization of enemy property, requisitions and contributions, assault, siege and bombardment, occupation, etc., etc. The relations between belligerents and neutrals is another long chapter in the laws of war which, in the text-books, are even more numerous and precise than the laws of peace, and to which the bulk of the attention of jurists has notoriously been given in the past.

THE SHORTCOMINGS OF INTERNATIONAL LAW

(a) *Conflicting Views*

To anyone who has read the preceding pages of this chapter it will be fairly clear that complete agreement on even the fundamental tenets of international law can hardly be expected. Thus, for instance, there is no single international law on questions of nationality, but a number of national stipulations which may involve two states laying claim to the same citizen, or persons finding themselves without nationality, or various other conflicts and contradictions. There is, similarly, no universal agreement on, *e.g.*, the extent of the responsibility of a state for acts against the representatives of a foreign state taking place in its territory, or on the limits of territorial waters, or on where to draw the line between the right by national legislation to confiscate property, and the property rights of foreigners.

(b) *Limited Range*

Nor is it difficult to realize that, in addition to there being no agreement on some of the points of international law, there are whole regions in which international relations are not governed by any law at all. As Professor Brierly points out in an article on " The Shortcomings of International Law," published in the *British Yearbook of International Law for 1924*,

> " the conduct of States relegates international law to a wholly subordinate position in international relations. . . . At present international law regulates not the whole but only a part of the sphere of international relations " (p. 5).

Obviously there will always be matters in the relations of states, as in the relations of individuals, not covered by law. But unfortunately, at present, the " great majority of the differences for the sake of which states are prepared to resort to war " fall within the category of questions which are outside the domain of international law. This reserved domain used to be vaguely designated as that affecting the vital interests, independence or honour of

states, and is defined in the Covenant as that solely within domestic jurisdiction. The questions belonging to this reserved domain are thus known as political or non-justiciable — in contradistinction to legal or justiciable—issues.

" If the establishment of the rule of law between nations is to be anything but the vague aspiration of the idealist, if international law is ever to be more than a convenient means of settling disputes of minor importance or of facilitating the routine of international business—services which, valuable as they are in themselves, are not the highest of which it ought to be capable—it can only be by the progressive diminution of the extent of this ' reserved domain,' and the annexation of part of it at any rate to the domain of law " (p. 7).

A similar view is taken by Professor Bruce Williams,[1] who writes that many of the vital issues in international relations have never been brought within the domain of international law at all, but operate in what has been termed the " non-legal " areas of international life.

He adds a quotation from J. S. Reeves, " International Society and International Law," in *The American Journal of International Law* (vol. xv., p. 372) :

" The occupation of these non-legal areas in international life by legal relationships, the change from a dynamic to a static situation can come about only gradually, and by the agreement of its members, gradually by tacit consent or through conscious agreement to reduce the dynamic to the static, reached in part by diplomatic adjustment, in part by law-making treaties, in part by the creation of an international judicial jurisdiction." [2]

(c) *Lack of Means of Development*

Unfortunately, the conflict of views on the tenets of international law and the lack of any tenets on fundamental points are aggravated and prolonged by the lack of means of developing international law. As Professor Brierly remarks :

" Within any well-ordered modern State the process of adapting the law to new conditions is perpetually going on. In part, in modern times, it is a conscious process operating through legislation, through judicial decisions, or through juristic interpretation; in part it is a more subtle process. But international law lost the most fruitful seed of development that it has ever had when, far too early for the health of the system, though doubtless inevitably, its foundation in natural law was undermined. With the triumph of the positive school the problem of development became immensely more difficult, for the system possesses hardly any of the apparatus of change that exists within a municipal system. Not only has it no legislature, and until recently no courts; but even the spontaneous growth of a new customary rule is incomparably more difficult than it is within the community of a State. For the society of

[1] *State Security and the League of Nations.*
[2] Bruce Williams, *op. cit.*, pp. 5-6. See also below, pp. 385-386 and 407.

States is numerically small; the bonds between them are still much weaker than those between individuals in a State, and though international intercourse grows closer every day, it has to be remembered that the growth is mainly in intercourse between the individuals of different States and not between the States themselves." [1]

As a particular instance of this lack of means for developing, and hence changing, international law, Brierly further points to the absence of means for securing release from treaty obligations. He suggests that " it is no more possible for modern international law to insist on the absolute binding force of treaties " than it has been for English law to adhere to the doctrine of the sanctity of contracts in all circumstances.

" That doctrine has been qualified by innumerable legislative interferences, and by an enormous judicial development of the law relating to impossibility of performance, restraint of trade, public policy and the like; and yet there is no reason to think that the respect for good faith among Englishmen has been sensibly weakened in the process. Nor need the good faith of nations be weakened by a similar development of international law. Indeed without some such development the prospects of good faith in international law are far less hopeful than they would have been in municipal law; for municipal law at least was not handicapped by the necessity of upholding the sanctity of a contract into which one party has been induced to enter by duress." [2]

(d) *The Dogma of Sovereignty*

But the most serious defect of all in international law is the fact that it is based on the doctrine of state sovereignty. This doctrine has already been touched upon,[3] and is further dealt with below.[4] It is, as Professor Brierly points out in the article already twice quoted, not a legal but a philosophical or pseudo-metaphysical concept, which, in the words of an American writer, Professor Pitman B. Potter,

" political scientists invented, developed to extreme proportions, set loose in the world in a day when we were leaders of political thought, and left by our abdication of the task of leadership in these later days unsupported by any complementary doctrine of international solidarity." [5]

Lawyers have been too prone to treat this doctrine as an arid dogma. The notion at the root of sovereignty is superiority, which may be appropriate in analysing the internal life of the state, but can hardly mean anything when applied to the relations between states: the word independence is negative and does not admit of degrees. If used literally it would imply the impossibility of inter-

[1] *Ibid.*, p. 9.
[2] *Ibid.*, p. 16. See below, pp. 347-349.
[3] See above, pp. 119-120, 269-270, 281.
[4] Pp. 307-313.
[5] P. 12.

national law altogether. A great many of the rights commonly deduced from sovereignty, such as free disposal of the territory and subjects of a state, bear little resemblance to the actual position of states in their relations to one another.

" The fundamental fact which seems to lie at the root of the divorce between law and policy in international relations is that the law remains formally based on an individualistic theory of the relations of States which the States themselves have to a very great extent discarded. Law is still thinking in terms of rights; States are thinking of interests and demanding that they be protected, ' si possis recte, si non, quocumque modo.' A system of law that encourages the maximum assertion of will may be tolerable at certain times, as in the nineteenth century; but we are more and more finding it intolerable in the twentieth, and it has already almost ceased to be the theory, as it certainly has ceased to be the practice, of our municipal law. Yet we continue to proclaim it as the unchallengeable basis of international law, though it is rapidly passing away also from the structure of international society. To do that means that we are consenting to a divorce between the law and the ideas of justice prevailing in the society for which the law exists; and it is certain that as long as that divorce endures, it is the law which will be discredited." [1]

Views on International Law

These shortcomings account for the rather moderate estimates generally formed on the nature of international law. Such estimates, indeed, go all the way to a total denial of its existence in any real sense. Thus Bryce remarked that:

" Although in civilized countries every individual man is now under law and not in a State of Nature towards his fellow-men, every political community, whatever its form, be it republican or monarchical, is in a State of Nature towards every other community; that is to say, an independent community stands quite outside law, each community owning no control but its own, recognizing no legal rights to other communities and owing to them no legal duties. An independent community is, in fact, in that very condition in which savage men were before they were gathered together into communities legally organized." [2]

W. W. Willoughby, in *The Fundamental Concepts of Public Law*, writes that from the

" point of view of the constitutional jurist, international law is atomistic, non-civic, individualistic. Thus regarded, nations are as individuals in that ' state of nature ' in which Hobbes, Locke, Rousseau, and the other natural law writers placed primitive man." [3]

Lord Salisbury declared that " International Law . . . depends generally on the prejudices of the writers of text-books," and added

[1] *Ibid.*, p. 16.
[2] *International Relations*, p. 3. The quotation, like that following it, is taken from Bruce Williams, *op. cit.*, pp. 2-3.
[3] Pp. 283-284.

that as "it can be enforced by no tribunal . . . to apply to it the phrase 'law' is to some extent misleading." Birkenhead, from whom this quotation is taken, and who gives it with some complacence, remarks a little later that "international law will not soon recover from the cynical contempt with which Prince Bismarck was never tired of bespattering it," [1] from which it may be gathered that Bismarck must have spoken in the same strain as Lord Salisbury.

Professor Brierly, in his brilliant article on "The Shortcomings of International Law," recalls Grotius' warning that men have never been lacking, now or in the past, who scorned this branch of law and considered that it was nothing but an empty name, and suggests that "it is a disquieting thought that after three hundred years of the progress of the science the same criticism should be heard to-day."

The last echoes of the great Austinian controversy have not yet quite died away—namely, as to whether international law is law in the proper sense of the term or merely a description of certain moral precepts which have been formulated in legal terms. Austin contended that an essential characteristic of law was the machinery and authority to enforce its dictates, and denied the character of law to the rules governing the relations of states because this feature was lacking. By most jurists this controversy is now looked upon as a quarrel about words. Thus Hall points out that the rules governing the relations of states have always been treated as law, and written and argued about by juristic methods, while infringements have frequently been followed by acts of compulsion, and generally considered to warrant such acts. Moreover, municipal law in the earlier stages of social organization was often not enforced by a determinate authority, but simply left to the exaction of redress by the aggrieved party with the approval of public opinion.

"To regard the foregoing facts as unessential is impossible. If the rules known under the name of international law are linked to the higher examples of typical positive law by specimens of the laws of organized communities, imperfectly developed as regards their sanction, the weakness and indeterminateness of the sanction of international law cannot be an absolute bar to its admission as law; and if there is no such bar, the facts that international rules are cast in a legal mould, and are invariably treated in practice as being legal in character, necessarily become the considerations of most importance in determining their true place. That they lie on the extreme frontier of law is not to be denied; but on the whole it would seem to be more correct, as it

[1] *Op. cit.*, p. 10.

certainly is more convenient, to treat them as being a branch of law, than to include them within the sphere of morals." [1]

On the other hand, Lord Birkenhead, frequently described as the last surviving Austinian, remarks that the analogy with the customs and observances in an imperfectly organized society which have not fully acquired the character of law but are on the way to become law

"is no doubt a fairly exact one, but it must always be remembered that international law may have attained to a perfect development of type, and may therefore be an inchoate law never destined to reach maturity." [2]

He adds pertinently:

"It may be conceded that 'the proper scope of the term [law] transcends the limits of the more perfect examples of "law"'; it may even be doubtfully admitted that the word, at its vanishing point, may be used to describe the usages of a community when a legalized self-help is the only redress for wrong; but such observances become clearly non-legal if the lawbreaker and the injured party are equally entitled to pray violence in aid, and if success is retrospectively allowed to determine the justice of their original quarrel. . . . As between Nation A and Nation B international law declares A bound to do a certain act. A refuses: it has broken the law. War follows, in which A is victorious. So far as international law is concerned the nation is now justified in its refusal. Such a practice is almost anarchical, and no analogies, however striking or numerous, between international law and law proper can blind us to the impassable gulf which divides them." [3]

The principles of international law, he concludes,

"are not infrequently violated, and breaches may be consecrated by adding successful violence to the original offence." [4]

SOVEREIGNTY, SELF-PRESERVATION, WAR AND LAW

The Paradoxical Evolution of International Society

Lord Birkenhead's remark brings out the contradiction running through the whole subject of international law. It is all very well to draw an analogy between the relations of individuals in a rudimentary society and that of states in international society. But a rudimentary society, where the powers of the community over the individual and the organization of justice were vague and ill-defined, at the same time left the rights of the individual *vis-à-vis* the community equally vague. When such a society developed the first thing to be organized and defined were the rights of the community. The rights of individuals in all societies we know have been a secondary and a later product.

[1] *Op. cit.*, p. 16.
[2] *Op. cit.*, p. 12.
[3] *Ibid.*, pp. 10-11.
[4] *Ibid.*, p. 19.

International law, on the contrary, started with the sovereignty of the units of international society, and has concentrated almost exclusively on developing and refining this conception and deducing from it all it implies. That is, we have here a society where the right of the individual has throughout been conceived as supreme, and where the laws of the society have been elaborated on this assumption. Originally the doctrine of sovereignty meant a step forward from the confusion of the Middle Ages, and was thereby an instrument of progress, both in breaking up theocracy and feudalism in the relations between states and in advancing from dynastic and property conceptions to democracy within states. Similarly, the elaboration of rules for the conduct of war meant an advance in humanity. But as the fundamental assumptions behind sovereignty and the legitimacy of war were developed by generations of jurists in terms of rights and duties they became more and more difficult to reconcile with any conception of law, let alone practical necessities or moral decency. It was as though the legal evolution of a community had proceeded on the assumption that the individual owed no duty to anyone but himself, and consequently possessed the right to embark on a career of murder, rape and arson whenever the fancy seized him.

Whereas the ancient and mediæval civilizations were generally inspired by the concept of the unity of civilization, and wars occurred either from attempts to realize this unity by fire and sword—*i.e.* unity was conceived as supremacy—or because of the absence of all law and order and the prevalence of frank anarchy, the relations of civilized states in the last three centuries have been partly guided by, and partly interpreted into, an elaborate body of rules styled " international law," which attempt in some sort, paradoxical as it may seem, to erect a system of *legalized* anarchy.

This attempt is self-defeating, and more dangerous than most misapprehensions of reality. It has also bred a revolt against its own absurdities. Both these points require examination.

This Paradox tolerable in Peace

The paradox of a community composed of units that are sovereign, while it forces resort to legal fictions and causes practical difficulties, is not unworkable so long as there is peace. The idea of a society whose members are bound only by voluntary ties is not necessarily absurd so long as it is assumed that its members are animated by mutual good will and have a paramount common interest in peaceful co-operation. A society even of sixty individuals could be imagined in such circumstances and *a fortiori* a society of

sixty states. In such a society the supremacy of the right of self-preservation might be admitted in the abstract so long as it was tempered in practice by the belief that the interests of each dictated the peaceful co-operation of all. Quite an idyllic picture could, in fact, be drawn on this basis!

BUT INTOLERABLE WHEN IT PRESUPPOSES WAR

It is when the supremacy of the right of self-preservation, which is the logical deduction from sovereignty, is interpreted as necessitating the use of force, and particularly the institution of war, that the most formidable legal difficulties and practical disadvantages become apparent. To realize this it is only necessary to glance at the definitions of self-preservation given by jurists and the confusion that results when they try to reconcile this conception with the idea of law.

THE RIGHT OF SELF-PRESERVATION

Thus Hall states that,

" even with individuals living in well-ordered communities, the right of self-preservation is absolute in the last resort. *A fortiori* it is so with States, which have in all cases to protect themselves." [1]

Later [2] he adds that

" in the last resort almost the whole of the duties of States are subordinated to the right of self-preservation. . . . The right in this form is rather a governing condition, subject to which all rights and duties exist, than a source of specific rules. . . . It works by suspending the obligation to act in obedience to other principles."

Professor Bruce Williams, in *State Security and the League of Nations*, quotes a long string of authorities from whom the following extracts may be given:

" The right of self-preservation is even more sacred than the duty of respecting the independence of others. If the two clash a State naturally acts on the former." [3]

" Of the absolute international rights of states, one of the most essential and important, and that which lies at the foundation of all the rest, is the right of self-preservation. It is not only a right with respect to other states, but a duty with respect to its own members, and the most solemn and important duty which the state owes to them." [4]

" When a conflict arises between the right of self-preservation of a state and the duty of that state to respect the right of another, the right of self-preservation overrides the duty. *Primum vivere.* A man may be free to sacrifice himself. It is never permitted to a government to sacrifice the state of which the destinies are confided to it. The government is then authorized, and even in certain

[1] *Op. cit.*, p. 65.
[2] P. 322.
[3] T. J. Lawrence, *Principles of International Law*, 7th edition, p. 125.
[4] Phillipson's *Wheaton*, p. 87.

circumstances bound, to violate the right of another country for the safety (*salut*) of its own. This is an excuse of necessity, an application of the reason of state. It is a legitimate excuse." [1]

On these quotations Professor Williams comments as follows :

" Almost any standard treatise on the law of nations enumerates as one of the fundamental principles of international law ' the right of the state to existence.' In the statement of this doctrine, moreover, there was long the persistence of the dogma, drawn from the principles of natural law philosophy, that this right was an ' absolute ' or unlimited one and that the state concerned at a given time was the sole authoritative judge of the conduct necessary to protect and conserve its existence. From the actual conduct of states there has developed a considerable body of practices commonly treated by publicists under the title of the ' rights of the state to self-preservation.' For some of these practices warrant can be derived from the accepted principles of law ; but others candidly transcend the law ; they are frequently grouped under the formula of ' acts of necessity,' and justification for them, if sought at all, must usually be placed on a moral basis." [2]

It is obvious that the exercise of this " absolute " right of self-preservation by all states at each other's expense, on their own interpretation of the necessity of the occasion, would lead logically either to the duty to put up with anything your neighbour chooses to inflict on you in the name of his self-preservation, or to the clash of equal and opposite rights, settled only by superiority of force. The problem is not made any easier of solution by the fact that :

" Each independent state has full discretionary legal right to determine when, and under what circumstances, and for the attainment of what purposes, it will declare or threaten war against another state or take any other aggressive action toward it." [3]

In other words, as we shall see below,[4] international law considers all war equally legitimate, whether or not it originates in flat violation of treaty obligations or of the principles of international law. The logical consequence of all this is commented upon as follows by W. W. Willoughby [5] :

" Thus, at a stroke, all possibility of illegal acts upon its part is rendered impossible unless it be held that the exercise of a legal right by a state which is in violation of the fundamental principles of justice upon which international jurisprudence is itself founded is, regarded in the light of that jurisprudence, an illegal act, and, therefore, one that is voidable by those injured by it, if not void *ab initio*. Not to admit the foregoing conclusion destroys the foundation upon which international society rests."

[1] Rivier, *Principes du Droit des Gens*: quoted by Bruce Williams, pp. 45-46.
[2] *Op. cit.*, pp. 7-8.
[3] Bruce Williams, *op. cit.*, p. 17.
[4] P. 315.
[5] "Principles of International Law and Justice, raised by China at the Washington Conference," *Proceedings, American Society of International Law*, 1922, pp. 21-22: quoted by Bruce Williams, *op. cit.*, p. 17.

It is indeed hard to resist the conclusion that so long as international law recognizes all wars as equally legitimate it is digging its own grave. As Hall puts it :

" As international law is destitute of any judicial or administrative machinery, it leaves states, which think themselves aggrieved, and which have exhausted all peaceable methods of obtaining satisfaction, to exact redress for themselves by force. It thus recognizes war as a permitted mode of giving effect to its decisions. Theoretically therefore, as it professes to cover the whole field of the relations of states which can be brought within the scope of law, it ought to determine the causes for which war can be justly undertaken; in other words, it ought to mark out as plainly as municipal law what constitutes a wrong for which a remedy may be sought at law. It might also not unreasonably go on to discourage the commission of wrongs by investing a state seeking redress with special rights and by subjecting a wrongdoer to special disabilities." [1]

A similar conclusion is reached by Westlake, who points out that

" an attempt is sometimes made to determine in the name of international law the conditions on which recourse may be had to arms, as that an offer of submitting to arbitration . . . shall have been made." [2]

But Westlake goes to the heart of the matter in boldly denying the supremacy of the right of self-preservation and, by implication, the sovereignty of states. The true international right of self-preservation, he says, is merely the right of self-defence, and

" the conscientious judgment of the State acting on the right thus allowed must necessarily stand in the place of authoritative sanction so long as the present imperfect organization of the world continues." [3]

Moreover he adds :

" It may be questioned whether rights so inherent in a state that they are founded on its very notion can properly be admitted. . . . The right of association is one . . . over which the laws of all countries find it necessary to exercise a very real control, so much greater is the power of an association for evil than that of its individual members. But states are nothing more than associations of natural persons, acting too outside the salutary control of national law. Surely then the natural right of association is pushed to an intolerable extent when men are deemed to be empowered by it to give absolute rights to their creations in the international world; for instance, to give to a state an absolute right of self-preservation, in circumstances analogous to those which would justify a well-ordered state in dissolving an association which had been erected within it. . . .

" No doubt the state is of all human institutions that to which attachment is the most elevating to the emotions and the moral sentiments, especially when, as is the case of most states, its origin is so remote that the steps which have led up to it are forgotten, and it wears the semblance of being a mould appointed

[1] *Op. cit.*, p. 81.
[2] *Op. cit.*, p. 4 (vol. ii.).
[3] *Op. cit.*, vol. i., pp. 312-313.

by superior power for the feelings of its members to take shape from. Then those feelings, directed towards it, come nearest to pure altruism, having the smallest ingredient of satisfaction for ourselves or in our own work. But even then, although as a general rule we must admit the truth of Woolf's principle, that a state ought to preserve and perfect itself as an association of its citizens in order to promote their common good, patriotism should not allow us to forget that even our own good, and still less that of the world, does not always and imperatively require the maintenance of our state, still less its maintenance in its actual limits and with undiminished resources. The first interest of a society, national or international, is justice; and justice is violated when any state which has not failed in its duty is subjected to aggression intended for the preservation or perfection of another." [1]

The argument here clearly is that the existence of the state itself should be subordinated to the maintenance of justice. Later [2] he returns to this idea, and objects to the doctrine of military necessity on the ground that it " reduces law from a controlling to a registering agency."

The same idea is put even more strongly by Professor Krabbe, writing in *The Modern Idea of the State* [3] :

" The value of this interest [*i.e.* the interest which a nation has in creating a state] is no more unconditional than that of any other interest; and hence it falls to international law to determine its legal value. In order that this may be done, however, it must be made clear to the outside world that the nation really has a right to be a state or independent legal community. . . . A nation has no natural right to lead an independent legal life. If the legal value of the interests of the international community is not furthered by such an independent legal life, the claims of a nation to regulate its own communal life according to its legal standards are invalid."

Again, Professor Hyde [4] declares that :

" The continuance of the right of a state to membership for all purposes in the family of nations may be said to depend in a strict sense upon the effect of its conduct upon the international society. The welfare of that society may not require the maintenance of a particular state; its very extinction as such may be for the general good. When the acts of a state have caused the family of nations, or those members of it which unite to express the will of all, to reach such a conclusion, it forfeits the right to retain its place therein or to continue existence as a full-fledged member thereof. Various considerations may be productive of this result. These may be commonly assigned to the failure of a state, either through incompetency or political aggressiveness, to respond generally to its primary obligations to the outside world."

In other words, the way out indicated by the jurists is to subordinate national sovereignty to international obligations, or,

[1] *Op. cit.*, vol. i., pp. 307, 311-312.
[2] Vol. ii., p. 127.
[3] Pp. 238-239. This and the following quotation are also taken from Bruce Williams, *op. cit.*, pp. 61-62.
[4] *International Law*, i., p. 83.

if the phraseology be preferred, to supplement the former by the latter. But this before the war was mere theory. International relations then, and for some states to this day, were always and unhesitatingly conducted by governments on the assumption that self-preservation was the prime duty of states, if necessary by the selfish exercise of the right of intervention on the part of such states as were strong enough to indulge in this luxury, coupled with the legitimacy of war (of course, for "self-defence" or "self-preservation" in the view of the state resorting to war).

WAR AND LAW

This brings us to the consideration of the nature and status of war in international law.

(a) *According to Westlake*

Westlake comments as follows on the nature of war:

"International law did not institute war, which it found already existing, but regulates it with a view to its greater humanity. War is a piece of savage nature partially reclaimed, and fitted out for the purpose of such reclamation with legal effects, such as the abrogation or suspension of treaties, and legal restrictions, such as what are called the laws of war and neutrality. . . . The truth is that when war enters on the scene all law that was previously concerned with the dispute retires, and a new law steps in, directed only to secure fair and not too inhuman fighting. . . . The outbreak of war removes the controversy out of which it arose from the domain of law. It will be settled at the peace on such terms as the superiority of force decides. . . . At the peace there is no presumption that the parties will take the same view as before the war of their interests, political, commercial or other. It is for them to define on what terms they intend to close their interlude of savage life and to re-enter the domain of law. Those terms are at their disposal or at that of the stronger, and if the price exacted for peace is heavy, it ought not to be spoken of as a fine or penalty. Indignation at what was regarded as an unjust pretension, or resentment at what is regarded as a too obstinate resistance, may have contributed to fix it, but law has had no concern in fixing it. It is the last act of the lawless period, and both opinion and practice allow the victor to take advantage of that period by insisting on terms having no relation to the cause or occasion of the war. The terms may be just, more often the consciousness of their injustice is obscured in the victor's mind by his excited feelings, but in any case the genius of law does not inhabit a temple shared by the god of battles, and only returns when he has withdrawn from it."[1]

He further remarks that the "new law" which steps in at the outbreak of war,

"like the law which during the contest it replaces, consists of rules having the general approval of the society of nations and more or less enforced by the irregular action of that society; but there are great differences in the efficacy of the enforcement."[2]

[1] *Op. cit.*, vol. ii., pp. 32, 34 and 35.
[2] *Op. cit.*, p. 4.

The law governing the relations between neutrals and belligerents is jealously enforced by the neutrals in the protection of their interests. On the other hand :

" The rules which lay down the mutual rights and duties of belligerents present the action of the society of nations at a low level. A belligerent may complain that his enemy has violated the laws of war, he may use measures of retorsion, but the discussion which so arises is seldom brought to any clear decision. The victory of one party, or such balance of power as may be reached between the parties, brings to a single comprehensive close the war and everything connected with it, the disputes which led to the war, the ulterior aims which have been developed in its course, and the recriminations to which its incidents have given rise. . . . Resentment at an act which he deems to have been a violation of the laws of war may swell the indemnity demanded by the conqueror, but the amount added on that score cannot be distinguished, the vanquished pay the indemnity without admitting the violation, and if they condemn the conduct of the war by the conqueror their remonstrances remain wholly without effect. When in a subsequent war the temptation arises to repeat an act the lawfulness of which has been questioned in a previous war, the records of the latter furnish no pronouncement on its lawfulness which can be appealed to." [1]

Elsewhere [2] Westlake refers to the laws of war as the worst and weakest part of international law.

Since Westlake's day we have definitely left the era of isolated wars between two or three states and entered that of world-wide alliances, when war anywhere, as Lord Cecil has strikingly said, becomes war everywhere. The result is that neutrals no longer count, for if they are large and powerful states they will cease sooner or later to be neutral, and if they are not large and powerful they are ignored. At the same time, with a growing extension of war has come a growing intension of warfare, the organization of the whole country for war and the disappearance of the distinction between combatants and non-combatants. With these developments have come the increasing awfulness and passion of war.

(b) *Birkenhead*

This circumstance makes it difficult to withhold assent from Lord Birkenhead's remark, apropos of the doctrine of military necessity, itself merely an extreme but logical deduction from the supremacy of self-preservation, that :

" Carried to its conclusion, the application of the maxim as advocated would involve the result that in case of extreme necessity all the laws of war could be ignored, and with the belligerent himself a judge of that necessity the laws

[1] Westlake, Part II., p. 5.
[2] *Collected Papers*, p. 238.

of war would soon cease to exist. Such an eventuality would not necessarily be entirely evil in its results; it would lead to no more frightfulness than the dictates of humanity and the requirement of the public conscience would allow (and it may be doubted whether the rules of international law relating to warfare possess any stronger restraining power) and it would at the same time free international law of its laborious and often futile efforts to govern the relations of States under abnormal and unnatural conditions which it cannot control." [1]

(c) *Oppenheim*

Oppenheim reaches the same conclusion by a more circuitous route. He begins by expressing his impatience at the difficulty some people find in squaring war with law :

" Impatient pacifists, as well as those innumerable individuals who cannot grasp the idea of a law between sovereign States, frequently consider war and law inconsistent. They quote the fact that wars are frequently waged by States as a proof against the very existence of an International Law. It is not difficult to show the absurdity of this opinion. As States are sovereign, and as consequently no central authority exists above them, able to enforce compliance with its demands, war cannot, under the existing conditions and circumstances of the Family of Nations, always be avoided. International Law recognizes this fact, but at the same time provides regulations with which belligerents have customarily, or by special conventions, agreed to comply. Although with the outbreak of war peaceable relations between the belligerents cease, there remain certain mutual legal obligations and duties. Thus war is not inconsistent with, but a condition regulated by, International Law." [2]

He goes on to explain that war is legal, though its inception and objects may both be illegal :

" Whatever may be the cause of a war that has broken out, and whether or no the cause be a so-called just cause, the same rules of International Law are valid as to what must not be done, may be done, and must be done by the belligerents themselves in making war against each other, and as between the belligerents and neutral States. This is so even if the declaration of war is *ipso facto* a violation of International Law, as when a belligerent declares war upon a neutral State for refusing passage to its troops. . . . The rules of International Law apply to war *from whatever cause it originates.* This being the case, the question as to the causes of war is of minor importance for the Law of Nations, although not for international ethics." [3]

As we have already seen in the discussion on compulsive measures,[4] a belligerent need not stop making war when his opponent agrees to the original conditions for which war was declared, but can impose any further conditions he likes and is still within his legal rights. Thus the legality of war is rooted in the violation of every law: " his honour rooted in dishonour stood."

[1] *Op. cit.*, p. 222.
[2] *Op. cit.*, p. 114.
[3] *Op. cit.*, pp. 127-128.
[4] See above, p. 296.

Next there is the purpose of war, which is defined by Oppenheim as follows :

" Such a defeat as compels the vanquished to comply with any demand the victor may choose to make is the purpose of war. Therefore war calls into existence the display of the greatest possible power and force on the part of the belligerents, rouses the passion of the nations in conflict to the highest possible degree, and endangers the welfare, the honour, and eventually the very existence of both belligerents. Nobody can predict with certainty the result of a war, however insignificant one side may seem to be. Every war is a risk and a venture. Every State which goes to war knows beforehand what is at stake; and it would never go to war were it not for its firm, though very often illusory, conviction of its superiority in strength over its opponent. Victory is necessary in order to overpower the enemy; and it is this necessity which justifies all the indescribable horrors of war, the enormous sacrifice of human life and health, and the unavoidable destruction of property and devastation of territory. Apart from restrictions imposed by the Law of Nations upon belligerents, all kinds and all degrees of force may be, and eventually must be, used in war, in order that its purpose may be achieved, in spite of their cruelty and the utter misery they entail. As war is a struggle for existence between States, no amount of individual suffering and misery can be regarded; the national existence and independence of the struggling State is a higher consideration than any individual well-being." [1]

Against this background Oppenheim proceeds to describe the growth of the laws of war which, he says, have been entirely determined by three principles :

" (1) that a belligerent should be justified in applying any amount and any kind of force which is necessary for the realization of the purpose of war—namely, the overpowering of the opponent; (2) the principle of humanity, which says that all such kinds and degrees of violence as are not necessary for the overpowering of the opponent should not be permitted; (3) the principle of chivalry, which arose in the Middle Ages and introduced a certain amount of fairness in offence and defence, and a certain mutual respect."

Making these three principles responsible for the laws of war, it may be observed, is rather like locking up a hungry tiger in a cage with a couple of decrepit lambs and expecting all three to live together happily for ever afterwards. Surely it is obvious that the first of these principles is capable of excusing, and in the moods engendered by war, particularly by the desperation with which modern wars are waged, certain to justify any violation of the other two principles.

This, in fact, is practically admitted by Oppenheim. He declares that :

" The evolution of the laws and usages of war could not have taken place at all, but for the institution of standing armies, which dates from the fifteenth

[1] P. 123.

century. The humanizing of the practices of war would have been impossible without the discipline of standing armies; and without them the important distinction between members of armed forces and private individuals could not have arisen." [1]

In other words, if the evolution of the laws of war is a consequence of the distinction between combatants and non-combatants it is bound to be reversed if this distinction disappears.

And that it is disappearing is acknowledged by the editor (Professor McNair) of the fourth edition, who writes:

" The time-honoured distinction between members of the armed forces and civilians is threatened by four developments which appeared during the World War:

" (1) Wars are nowadays fought by whole nations in arms. Not only has conscription carried the day, the whole male population of military age being enrolled in the fighting forces: all other men and all fit women are asked, or even compelled, to assist the fighting forces as workers in munition factories, and to undertake all kinds of other work, so as to release fit men of military age for the armies. During the World War, thousands of women were enrolled and sent to the front as cooks, drivers, store-keepers, etc., for the army, to take the place of soldiers previously so employed. Russia even admitted women into the ranks as soldiers.

" (2) The development of aerial warfare. The fact that it has been considered legitimate for air-vessels to bombard, outside the theatre of war, munition factories, bridges, railway stations, and other objects of value for military communication and preparation, must necessarily blur, or even efface, the distinction between members of the armed forces and civilians. Air-vessels cannot aim with any precision at their direct objectives; and if they undertake bombardment by night, such aim would seem to be entirely impossible.

" (3) Democracy has for the most part conquered the world, so that wars are no longer dynastic but national. Governments are supposed to be representative, nations are supposed to be responsible for their Governments, and wars have therefore become wars between all the individuals of the warring nations.

" (4) The enormous development of international means of communication for commerce and industry. To put economic pressure upon the enemy has always been legitimate; but, whereas in previous wars it only played a secondary part, during the World War it became of primary importance. The consequence is that, although war still is in the main a contention between States by their armed forces, the civilian population nowadays is exposed to extreme suffering in health and property." [2]

Conclusion

This is surely a plain statement of a notorious fact. The conclusion is unavoidable—namely, that we are moving away from the temporary and artificial distinction between combatants and non-combatants, and going back to the older condition where belligerent communities faced each other as compact masses, all

[1] *Op. cit.*, p. 136.
[2] *Op. cit.*, pp. 121-122.

the inhabitants of one being considered jointly and severally the enemies of the other. What was this condition? It is vividly described by Westlake:

"At the close of the Middle Ages the whole matter was governed with unflinching consistency, at least in theory, by the principle of the solidarity between a prince and his subjects and between a city and its citizens. The *diffidatio* which introduced the state of war and made prince or city the enemy of prince or city had for its necessary consequence that each prince or city was the enemy of the subjects or citizens of the other, and that the subjects or citizens of each were individually the enemies of those of the other. Peaceful relations were not modified but destroyed, and legal relations during the war there were none, in whatever degree Christianity or chivalry might mitigate practice." [1]

Again, can it be denied that this is the direction in which we are moving? Compare the complete cessation of intercourse and intense bitterness of feeling in the world war with the extent to which travel and personal relations went on throughout the Napoleonic wars. Look at the contrast between Goethe's famous confession of his admiration of Napoleon, and inability to hate Frenchmen, with the antics of professors and writers on both sides in the world war! How revealing is the *naïveté* of Trotter's outburst [2] that it was difficult to answer the pacifists on the assumption that Germans were, like ourselves, human beings, and that we must therefore discard this assumption and substitute the belief that they were a kind of predatory carnivore, like wolves or dogs. How pitiful the delusion of Trotter and other "good men and true" that this madness denoted "invigorating contact with reality." How painful to remember that that fastidious and highly cultivated man of letters Sir Edmund Gosse declared publicly he had done with German literature! How vile the thought of the meetings to collect money for starving Austrian children that were broken up by home-front and base-camp warriors of the American Legion, or the slimy cruelty and demagogic hysteria of some of our baser Press when such children were brought to England. Can anyone who lived through the last war and the post-Armistice years and felt their spirit, the blind unreason of mob passion, the bitter hate, the adoration of violence and death—can anyone honestly deny that there is any infamy or any horror to which we may not be brought by war?

[1] *Op. cit.*, vol. ii., p. 36. The *diffidatio* or defiance is described as a symbolic breaking of the bond of faith between the belligerents—surely a strikingly apt simile for the attitude of the belligerents to each other in the world war.

[2] Quoted above, pp. 48-50.

For, mark, these things are no accident. They are part and parcel of war, the inevitable development of the mad logic of war. The logical French have already passed a famous Bill preparing the conscription of the whole nation in war time, both sexes and all ages, capital as well as labour, art and science: the whole country is to be organized into one vast machine, mentally, morally and materially, on the outbreak of war. This was what all the belligerents, in varying degree, had done by the end of the last war, and in the next we shall begin far beyond where we left off in 1918, to end God knows where. If we ever have another war all the belligerent communities will become vast war-machines in which men's souls will be conscripted as thoroughly as their purses and bodies, and all bent to the one great end of mutual slaughter.

To make war we have to believe in it, and war has become so contradictory to everything which men normally consider makes life worth living that to believe in it we have to become mystics, monomaniacs, social sadists, who accept as dogma beliefs that to humanists seem unspeakably silly, blasphemous and abominable, for they culminate in the denial of the bond of common humanity that unites the warring nations in their despite. The characteristic of war feeling is the intense sense of unity within the belligerent nations, where all distinctions of class, age and party are swept away, and all citizens linked together in a common striving for a common end, coupled with a passionate repudiation of all and every link with the enemy, who is considered as not only beyond the pale of civilization, but as not even human.[1]

LAWS OF PEACE *v.* LAWS OF WAR

The relationships between belligerents are, therefore, the exact antithesis politically, legally and psychologically to those obtaining between states at peace. In peace states are, at least in legal theory, on friendly relations with each other and all are members of one community or family. The rules they adopt, and which slowly harden into law, for the conduct of their relations with each other, are based on the recognition of the bonds that unite them

[1] Remember Bonar Law's famous distinction between German nature and human nature, and *cf.* Bertrand Russell's remark: "To very many men, the instinct of patriotism when the war broke out was the first instinct that had bridged the gulf, the first that had made them feel a really profound unity with others. . . . War at its outset integrates the life of a nation, but it disintegrates the life of the world, and in the long run, the life of a nation too" (*Principles of Social Reconstruction*, pp. 215-233). *Cf.* also his remark at the beginning that "to one who stands outside the cycle of beliefs and passions which make the war seem necessary, an isolation, an almost unbearable separation from the general activity, becomes unavoidable."

and the mutual interests that they wish to develop and safeguard. They are the result of their "sociability," of the desire to have the greatest possible order and rationality in their relations, the common "juridical consciousness" and sense of solidarity of the peoples joined together in the family of nations. In this view international law is imperfect and weak and notably lacks means of enforcement, but is based on the same general idea or social principle as law within national communities and subject to the same process of evolution.

But what juridical consciousness or desire for order or rationality and uniformity in their relations or recognition of common interests is there between belligerents? Is it not obvious that not only are these psychological foundations of all law absent—they are replaced by their exact opposites, by the whole-hearted desire of the belligerent communities to destroy each other, by a passionate repudiation of any and every common bond, tie, aim or tradition. Here there is force indeed, the maximum of force, but pitted against rival force and exerted not to vindicate law but to impose a selfish will, if necessary in defiance of all laws.

Whereas the laws of peace spring from the common interests and express the common purpose of the states that acknowledge them, the so-called laws of war are a contradiction of what each belligerent conceives to be his interest, the thwarting of their several purpose to slay each other. The laws of peace grow up from the conditions of society and are germane to its life and working. The so-called laws of war are hampering and irrelevant moral restraints carried over from peace time by the belligerents and felt by them to be something alien and external, a hindrance to the accomplishment of their object. The logic of war is so mad and unnatural that men have still to some extent resisted its conclusions, and retained instincts of compassion and commonsense, however inconsistent they may seem when imported into the business of mass butchery.

But the logic of war is inexorable, and the last war revealed depths of barbarity which would have seemed incredible in 1914. And the advance of science, and with it of the technique of slaughter, is also inexorable. The next war will be worse than the last. If there is a world war in which the coloured races are pitted against the white we may expect to see wholesale murder of prisoners and wounded of both sexes,, not to mention the bombing of whole populations in order to produce terror and, if possible, social dissolution. "Who in Europe does not know that one more

war in the West, and the civilization of the ages will fall with as great a shock as that of Rome? " [1]

In international law therefore we must make a clear and sharp distinction between the laws of peace—which are a real and developing, though woefully imperfect, system of law—and the so-called laws of war, which have nothing to do with law in any true sense, but are simply restraints on the business of mutual slaughter imposed by belligerents on themselves out of an inconsistent though praiseworthy respect for humanity and chivalry. These self-imposed restraints, miscalled laws, are weak, and doomed ultimately to fail, because they are rooted in the institution of war, which is itself rooted, as regards its origin, methods and objects, in a denial of all law and of all the instincts of humanity and chivalry. War indeed is, ultimately and fundamentally, incompatible not only with law but with civilization itself. One of the two must destroy the other. To try to build up a system of law with the institution of war embedded in it is like putting T.N.T. into your tooth powder and expecting to get a nice shiny polish if you only rub hard enough. Talking about laws of war is about as sensible as preaching the chastity of prostitution.

INTERNATIONAL LAW AND THE WORLD WAR

(a) *The Sense of Failure*

These conclusions are strengthened if we examine the effect of the world war on international law. There was first the very general impression that international law had been proved to be all nonsense.

" The world war had profoundly troubled men's minds with regard to the value, efficacy and even existence of international law. The sight of so many treaties violated and so many rules flouted, of so much arbitrariness in the relations of peoples, had made us all a prey to doubt and pessimism. The ruin, the bankruptcy of international law, the impossibility in the last analysis of subordinating the activity of states to obligatory rules of law, were freely suggested." [2]

The editor (Professor A. Pearce-Higgins) in his preface to the seventh edition of Hall's *International Law*, published in 1917, remarks that :

" The very structure of the Law of Nations has been shaken to its foundations in this civil war among the Society of Nations, and there are those who would have us believe that International Law has ceased to exist." [3]

[1] Stanley Baldwin, January 8, 1927.
[2] Politis, *op. cit.*, pp. 9-10.
[3] *Op. cit.*, p. xii.

Leonard Woolf, writing in 1916,[1] remarks that:

"It would be an easy and a human thing to say, what you may hear said repeatedly to-day in any intellectual company of human beings, that International Law has been proved not to exist. As a matter of fact, the whole history of the nineteenth century, and of this war, shows that International Law does exist, and is of supreme importance. The cry that it does not exist is merely the cry of shallow despair at finding that it does not exist precisely in the form that we desire. The fact that the rules of International Law are broken, and that those rules have not been able to prevent certain wars, does not prove that the rules do not exist, or that they have not been, and will not be, the most potent instruments in keeping the peace."

Mr Woolf himself would probably be the first to agree that the international law he was referring to was that comprised in the laws of peace, and that his protest was directed against the tendency to include this in the condemnation of the laws of war. In so far as the statement that "international law does not exist" was merely a loose but emphatic and brief way of expressing the intense conviction of public opinion that war, as it was being experienced between 1914-1918, was incompatible with any meaning of the word "law" that laymen could understand, Mr Woolf, it may be hazarded, would be the last to deny that public opinion was right.

(b) *The Behaviour of the Belligerents*

In the second place there was the realization by jurists that both sides played ducks and drakes with even such international law as existed. This is pointed out with mournful *naïveté* in the preface already quoted to the seventh edition of Hall's *International Law*:

"The following pages will show flagrant violations on the part of Germany and her Allies of the rules of International Law both written and unwritten, as well as of the laws of humanity, which are the basis of all laws; there have also been adaptations of existing rules by the Entente Powers to altered conditions, which their enemies and neutrals may consider to be in some respects violations of the Law of Nations; but of the grosser violations of the laws of humanity on their part, I think it will be hard to find examples."[2]

The *naïveté* of this statement, it may be explained for the benefit of such as may require the explanation, is contained in the fact that from the German point of view what was called the "hunger-blockade," by which a whole nation, including men, women and children, were subjected to a process of slow starvation, was more inhuman, though less dramatic, than the exploits of their submarines or air-raiders. To us, no doubt, it was the

[1] *Op. cit.*, pp. 11-12.

[2] *Op. cit.*, p. xiii.

other way about. But we are a party in the case and cannot set up as judges.

(c) *Law and the Allies*

This, however, is precisely what the Allies did do. As an instance of this attempt to brazen out the lawless carnage of the world war by identifying the Allies with " society " and their opponents with " criminals," " anarchists " and " outlaws," the following passage from the preface to the fifth edition of Birkenhead's *International Law*, published in September 1918, may be given :

" It may appear to some that the present moment was hardly opportune for a new edition of a work upon International Law. I do not share that view. It is true that the authority of this body of public doctrine has for four years reeled before a savage, calculated and almost successful assault. It is true that an immensely powerful and highly educated nation has challenged the whole world by its repudiation of Public Law. It is true that the Kaiser, out-Bismarcking Bismarck, has alleged that International Law is dead. It is true that had victory, in the final result, settled upon the standards of Germany, we could have burned our Grotius, our Vattel, our Phillimore, our Wheaton, and our Hall. But in ever-increasing numbers the world is ranging itself against the international anarchist. The audience watching the arena in which his crimes are displayed grows more and more hostile. And more and more, too, the logic of the stricken field is asserting its cold and merciless conclusions. The tragedy has been long, and the agony of the world has passed imagination. But to-day it is moving to its close with the terrifying inevitableness of which, in ancient tragic literature, Æschylus almost alone was the master. And to-day there must be sounding in the ears of the guilty the dreadful words of Failure and of Doom.

" And it should never be forgotten that Failure must involve Doom. The future of civilization requires that the authority of Public Law shall be reasserted with as much notoriety as marked the challenge; and it cannot be so reasserted without requiring from those who sought to destroy it a punishment so memorable, because so dreadful, that the offence will not soon be repeated. . . .

" The British Empire is very patient, and very slow in forming tenacious resentments; but I wholly misread the temper and the minds of my countrymen if they are not implacably resolved that the guilty shall pay for their crimes to the uttermost ounce in their bodies and in their purses. And the doctrines of International Law afford abundant warrant and precedent for both these demands." [1]

It was this view that inspired Lloyd George's egregious election stunt of hanging the Kaiser and punishing the war criminals, which was duly incorporated in Article 227 of the Versailles Treaty, providing for the trial of the Kaiser by the Allies,

" with a view to vindicating the solemn obligations of international undertakings and the validity of international morality."

[1] *Op. cit.*, pp. viii.-ix.

It is of course a matter of opinion, but it may be submitted that this sort of thing bears about the same relation to law as the mouthings of a bull gorilla to grand opera. International law would be hopelessly discredited if it became merely the mask for the ethics of the old cannibal chief who said that he had always found it perfectly easy to distinguish between right and wrong: "When I eat my enemy, it is right: when my enemy eats me, it is wrong."

(d) *The Barbarity of International Law*

In the third place, it was realized that international law was not only utterly inadequate but dangerously barbaric. Thus the invasion of Belgium, and the candid brutality of Bethmann-Hollweg's apologia for this act, shocked world opinion. There was no doubt that the invasion violated a treaty obligation. But according to international law war is legitimate even if it originates in the violation of a treaty. And the pleas of self-preservation and military necessity amply cover such violation. Professor Bruce Williams draws a striking parallel between the German invasion of Belgium, the British seizure of the Danish fleet in 1807 and Japan's invasion of Korea in the Russo-Japanese war, and quotes the curiously similar statements advanced by the three governments in defence of their respective acts.[1]

Theodore Roosevelt thus appraised Germany's conduct:

"Whatever we may think of the morality of this plea, it is certain that almost all great nations have in time past again and again acted in accordance with it. England's conduct toward Denmark in the Napoleonic wars, and the conduct of both England and France toward us during those same wars, admits only of this species of justification; and with less excuse the same is true of our conduct toward Spain in Florida nearly a century ago."[2]

There can indeed be small doubt that, if the supremacy of the right of self-preservation and the legitimacy of war are admitted as doctrines of international law, the German invasion of Belgium was legal, or at least a violation of the law which the law itself recognized as permissible. On the other hand the logical consequence is undoubtedly that stated by Elihu Root in the following words:

"The right of any strong nation to destroy all those alleged rights of other nations in pursuit of what it deems to be useful for its own protection or preservation is asserted. Under this view what we have been accustomed to call fundamental rights would become mere privilege, to be enjoyed upon sufferance according to the views of expediency held by the most powerful. If this

[1] *Op. cit.*, pp. 56-60.
[2] *America and the World War*, pp. 20-21 (quoted by Bruce Williams, *op. cit.*, p. 60).

view prevails the whole structure of modern international law will be without foundation." [1]

But Mr Root would appear to be wrong in speaking as though this state of affairs were introduced into international law by Germany's action. So long as international law merely declares and does not protect the right to existence and self-preservation,

" the effective enjoyment of this so-called right is in the last analysis dependent upon such measures of self-help as the state may be able to employ in its own behalf." [2]

In these circumstances,

" while the right of existence is possessed in principle equally by all states, its actual enjoyment is largely conditioned by the physical power of the individual state." [3]

(e) *The Lesson of Belgium*

In other words, the German invasion of Belgium did not create this state of affairs—it merely drew attention to it. But it did so in such a way as to convince many people that the existing state of affairs was unbearable.

" It was hardly adequate to the situation, however, merely to go on repeating that the state has a right to existence and to indulge in a condemnation of Germany, however justifiably made, for the application in her own behalf of a principle so universally held in esteem. The real basis of the problem lay in the order existing in international affairs which, in truth, was almost deserving of the term ' anarchic.' All states claimed the right to existence; it was a right universally proclaimed as one of the fundamental principles of the law of nations, but like all other ' rights ' under international law it was in the form merely of a ' declared ' and not a ' protected ' interest. Each state under the existing order was, in the last analysis, the sole guardian of its own existence, and the measures which states employed for self-protection were dictated by considerations of their own interests rather than by a regard for those which lay beyond their borders. . . .

" The invasion of Belgium, therefore, did something more than imperil the structure of international law. It revealed its grave inadequacy with respect to the protection of an interest which states regard as supremely important and raised the problem of a social protection of this interest if the prevailing and arbitrary methods of self-help were to be restrained." [4]

With self-help supreme in international law, there was no duty to repress violations of law. As Hall puts it :

" When a state grossly and patently violates international law in a matter of serious importance, it is open to any state, or to the body of states, to

[1] In *The American Journal of International Law*, vol. x., p. 215 (quoted by Bruce Williams, *op. cit.*, p. 9).
[2] Bruce Williams, *op. cit.*, p. 43.
[3] G. Fenwick's *International Law*, p. 143 (quoted by Bruce Williams, *op. cit.*, p. 43).
[4] Bruce Williams, *op. cit.*, pp. 10-11. See also above, pp. 68-69, and *cf.* Mr Kellogg below, pp. 331-332.

hinder the wrong-doing from being accomplished, or to punish the wrong-doer. . . . International law being unprovided with the support of an organized authority, the work of police must be done by such members of the community as are able to perform it. It is however for them to choose whether they will perform it or not.[1]

Here too it was felt that change was needed :

" If the law of nations is to be binding, if the decisions of tribunals charged with the application of that law to international controversies are to be respected, there must be a change in theory, and violations of the law of such a character as to threaten the peace and order of the community of nations must be deemed to be a violation of the right of every civilized nation to have the law maintained and a legal injury to every nation. . . . International laws violated with impunity must soon cease to exist, and every state has a direct interest in preventing those violations which, if permitted to continue, would destroy the law." [2]

To carry out this change some " objective " method was needed of ascertaining whether or not the law had in fact been infringed. As far back as Westlake [3] the idea had been advanced that the test should be an offer to submit a dispute to arbitration. A state doing so was trying to do its duty by the international community, while a state going to war in the teeth of an offer to arbitrate or of an arbitral decision was behaving like a violent anarchist.

(f) *The Inadequacy of Neutrality*

But all these developments pointed to the establishment of a distinction between " just " and " unjust " wars, and hence to the moral untenability of neutrality, which is based on the idea that, since war is equally legitimate for whatever reason belligerents choose to fight, the other nations are entitled to assume an attitude of indifference tempered by the protection of their interests. Already in Westlake we find the idea that

" there is no general duty of maintaining the condition of neutrality. On the contrary, the general duty of every member of a society is to promote justice within it, and peace only on the footing of justice, such being the peace which alone is of much value or likely to be durable. . . . Neutrality is not morally justifiable unless the intervention in the war is unlikely to promote justice, or could do so only at a ruinous cost to the neutral." [4]

Professor Nippold, in his *Development of International Law after the World War*, published in 1917, pointed out that :

" It should not be forgotten to-day that Christian Wolff, in his *Jus Gentium*, 1749, took the view that every state was bound to render assistance to every

[1] Hall, *op. cit.*, pp. 65-66.
[2] Elihu Root in " The Outlook for International Law," *American Journal of International Law*, vol. x., pp. 8-9 (quoted by Bruce Williams, *op. cit.*, p. 12).
[3] See above, p. 311.
[4] *Op. cit.*, vol. ii., pp. 161-162.

other that conducted a *just* war, whereas no state dare support a state whose war was *unjust*. The right to remain neutral was, therefore, limited to those cases where the justness of a war was doubtful. Lammasch is right when he says that this is the most nearly perfect ethical conception of the rights and obligations of neutrals." [1]

G. G. Phillimore, writing on "The Future Law of Neutrality," points out that:

"The feeling has undoubtedly grown up that the intimate relations of the civilized world in modern times, with its corresponding interdependence of nations in intercourse with each other, and the more highly developed conscience of the world demand a fresh edition of neutrality, and there is a tendency to expect that states should assume a moral obligation to take positive action as regards the great issues of the struggle to enforce the canons of international law and to give effect to their sympathies with the cause of one belligerent group or the other by ranging themselves with it instead of standing out of a struggle which is deciding the future development of the world." [2]

Thus we find the jurists, some as far back as the eighteenth century, reaching conclusions similar to those embodied in the Covenant and subscribed to by most of the civilized nations—namely, that there should be general obligations, incumbent on the whole community of nations, to (1) submit all disputes to some form of peaceful settlement, and (2) protect states abiding by this obligation against states violating it by war. The Covenant has worked out these obligations in detail, and given them concrete shape by instituting a system of conferences, tribunals and permanent machinery for their execution.

The Outlawry of War and the Principle of Sanctions

But old as these ideas are, and thoroughly discussed as they have been, they are nevertheless as yet only very imperfectly understood, as is made plain by the movement for the so-called outlawry of war and the discussions that followed the presentation of the so-called "Kellogg Proposal."

(a) *The Kellogg Proposal*

As the result of a speech by M. Briand, prompted by Professor J. T. Shotwell and some kindred spirits from the United States, came first the French proposal for a bilateral treaty between France and the United States, and then, in April 1928, Secretary of State Kellogg's draft six-Power treaty renouncing war, of which the two crucial articles read as follows:

"*Article 1.*—The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of

[1] P. 46 (quoted from Bruce Williams, *op. cit.*, p. 16).

[2] *Transactions of the Grotius Society*, iv., p. 44 (quoted by Bruce Williams, *op. cit.*, pp. 14-15).

international controversies and renounce it as an instrument of national policy in their relations with one another.

"*Article 2.*—The High Contracting Parties agree that the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise between them, shall never be sought except by pacific means."

(b) *Its "Outlawry" Background*

Behind this draft treaty is the outlawry of war movement in the United States. The titular head of the movement is Mr Salmon Oliver Levinson of Chicago, and some of its leading spirits are Colonel Raymond Robins, Professor John Dewey, Dr Charles Clayton Morrison and Senator Borah. Thus the movement is largely Middle-West and all home-grown American. This is to say that it owes a good deal of its "atmosphere" and psychology to the desire for political isolation, the conviction of America's all-round superiority, distrust of Europe and hostility to the League. And, as a natural result of the rejection of all post-war ideas with regard to peace, the movement harks back to the older pre-war peace movement in which America was a leader. This movement was strongly juridical in character, a tendency to which American public opinion is in any case predisposed by the existence of a rigid constitution interpreted by the Supreme Court and the general feeling that "politics" are a rather shady and useless pastime. The movement therefore, particularly in its earlier stages, showed many of the characteristics of a "reaction product"—that is, was definite chiefly in its opposition to any other suggestion. Its adherents spent a great deal of their time and energy supporting the isolationists and bitter-enders in their opposition to any form of association with or recognition of the League. The codification of international law was on their programme, but their chief contribution was to heap scorn on the work of codification being done by a League committee. Their desire for a court with affirmative jurisdiction was expressed by wholeheartedly combating the proposal that the United States should sign the Statute of the existing court and almost equally strong opposition to the idea of compulsory arbitration or obligatory judicial procedure, on the ground that existing international law was all wrong.

Their programme called first for a treaty "outlawing war" on the initiative of the United States, then for the codification of international law on the basis of the outlawry of war, and third, the setting up of a court with affirmative jurisdiction, by which was meant what in League phraseology is known as compulsory jurisdiction. Emphasis was laid throughout on the juridical

character of the scheme. Law in fact was contrasted with politics as though the two things represented independent and contradictory principles in human society. Thus Dr Morrison, in the preface to his book, *The Outlawry of War*, says that whatever merit it may contain is found in the following four theses :

" one, that the problem of war must be disentangled from all other controversies, and, thus isolated, brought directly before the nations for a yes or no decision; a second, that war is an *institution*—legal, established, sanctified, and supreme; a third, that it can be abolished only by disestablishing it, by casting it out of the legal system of the nations in which it is entrenched; and the fourth, that its disestablishment can be made effective only by establishing in its place an institution of peace *conceived not under political but under juridical categories*. This can be done only by a basic change in international law. A general treaty renouncing war as a means of settling international disputes would crystallize in legal form the moral will of the civilized peoples of the world."

On page 41 he returns to his thesis that

" the genius of the outlawry proposal is its thoroughgoing juridical character as contrasted with all plans for political or diplomatic associations or leagues, with all military alliances, with all arbitration treaties, and with all other schemes."

A resolution first introduced by Senator Borah in the Senate in 1923 states that

" war between nations should be outlawed as an institution or means for the settlement of international controversies by making it a public crime under the law of nations."

The same resolution recurs repeatedly to the view that law is the only alternative to war, and that only by purely judicial means —that is, the outlawry of war, the codification of international law and the establishment of an international court modelled on the United States Supreme Court—can the problem of securing peace be really tackled.

(c) *The " Outlawry of War " analysed*

It might be thought therefore that the outlawry of war school would make some drastic and definite proposal for changing international law at the point where it sanctions the international anarchy out of which wars arise—namely, where it recognizes that it is an inherent right of sovereignty to resort to force whenever the state doing so considers it necessary for its " self-defence." But this is precisely what the outlawry school does not do. When Dr Morrison, for instance, comes to this fundamental point—and he devotes a whole chapter to it—all he can say is that

" outlawry absolutely has no point of contact with the question of the right of self-defence."

Considering that all modern wars, and notably the war of 1914, have arisen through the exercise by states of the right of self-defence—every nation in the world war sincerely believed it was fighting in self-defence—and that the whole apparatus of militarism, preparation for war, and the vicious circle of fears and suspicions accompanying the armed peace, are kept alive in the name of self-defence, this is an amazing statement. The only explanation Dr Morrison offers is to suggest analogies that will not bear a moment's examination. He writes :

" The outlawry of war deals with the *institution* of war, and does not involve or affect the ethics of national self-defence, any more than the outlawing of the duel involved or affected the ethics of individual self-defence. Outlawry approaches the war evil from the point of view of public law—it is the juridical approach. It involves only the ethics that law is capable of administering. . . .

" The law says that I must not commit murder. But to defend myself against a murderous attack is my ' inherent and inalienable ' right—that is, *juridically* inherent and inalienable." [1]

In the first place the duel is only one form of combat between individuals, whereas war covers all methods of fighting between states. By definition war is the " state or condition of governments contending by force." When states defend themselves they do so by means of armies, navies and air forces operating under the so-called laws of war and directed by a government enjoying the status of a belligerent. What is even more important is that when the community forbade, or as Dr Morrison would say " outlawed," duelling it did so by making things extremely hot for people who were caught duelling. If they pleaded that they were merely engaged in self-defence, this plea was passed on by the community, which decided the matter—the decision was not left to the duellists.

Similarly, individuals who get involved in fights or killings are not allowed to decide for themselves that they have merely been engaged in self-defence: this plea has to be submitted to the competent authorities representing the community and decided on by them. This surely is the juridical essence of the situation and the capital difference between anarchy and law.

The so-called outlawry of war movement is, as we shall see below, of great psychological importance. But the one thing it does not even attempt to do is the very thing which is ostensibly its sole purpose—namely, to change the juridical status of war. Its proposals leave international law on this crucial point precisely where it was before. It is therefore juridically rather worse than useless, for it leads people to believe that they are reforming

[1] *Op. cit.*, pp. 209-210.

international law on the vital issue of war and peace when in fact they are leaving the sovereign right to resort to force at discretion exactly where it was before in law. They make believe to banish force from international relations at a stroke, when in fact states retain the untrammelled right to use force at the cost merely of juggling with distinctions without a difference between an indefinite condition known as " war " and an equally indefinite condition described as " self-defence," with the knowledge that in any case they are entitled to interpret these vague phrases for themselves and to enjoy the status of belligerents in so doing.

(d) *Analysis of the Kellogg Proposal*

A great deal of what has been said about the tenets of the outlawry of war school applies to the Kellogg proposal. It also is of great psychological, and so political, importance, but in itself has literally no bearing on the legal position of war.

In the first article of the proposal the contracting parties condemn something known as " recourse to war for the solution of international controversies " and renounce something else which they call " war as an instrument of national policy." The implication is that there are other kinds of war, which are not resorted to either to solve international controversies or as instruments of national policy, and which remain legitimate. This may sound like a mere technical quibble, but the fact remains that nations practically invariably go to war in the name of self-defence, and under this text they would still be free to do so. On this subject Secretary of State Kellogg, in an address to the American Society of International Law on April 28, 1928, said :

> " There is nothing in the American draft of an anti-war treaty which restricts or impairs in any way the right of self-defence. That is a right inherent in every sovereign State and implicit in every treaty. Every nation is free at all times, regardless of treaty provisions, to defend its territory from attack or invasion. It alone is competent to decide whether circumstances require recourse to war in self-defence."

This statement, it will be noted, drives a coach-and-four through the ostensible renunciation of war in Article 1. Mr Kellogg states the full-blooded anarchic pre-war doctrine, by which states can have recourse to violence whenever they please. In fact his statement, which is an accurate summary of pre-war international law on the point, is a complete legal justification for Germany's invasion of Belgium. If Bethmann-Hollweg were alive he might have sent Secretary of State Kellogg a telegram congratulating this American apostle of the renunciation of war on his vindication of

an action of the German Chancellor in 1914 that at the time came in for a good deal of criticism and misunderstanding.[1]

It may be noted as an amusing detail that Mr Kellogg, less mealy-mouthed than the outlawry of war purists, does not make a distinction between self-defence and resort to war—he says with brutal plainness that each sovereign state is alone "competent to decide whether circumstances require recourse to war in self-defence."

Again, the undertaking in Article 2 that the solution of all disputes or conflicts shall never be sought except by pacific means, apart from its negative wording, is no real juridical obligation, since there is no indication of any particular kind of peaceful settlement, let alone any reference to any machinery for peaceful settlement or any pledge to use such machinery. Juridically, this article is nothing but amiable verbiage.

But not only does Mr Kellogg's renunciation of war treaty leave the door wide open for war between equals on any and every pretext in the name of "self-defence," and impose no obligation to settle disputes peacefully. It also leaves strong states their old freedom to bully the weak—*i.e.* is no obstacle to imperialism. The very American Government that proposed the renunciation of war treaty had just previously, at the Pan-American Conference in Havana, in the same breath with a resolution renouncing war, stoutly defended the right of intervention, and pointed with pride to the bloody deeds of its marines and aeroplanes in Nicaragua as a specimen of this beneficent operation. Sir Austen Chamberlain welcomed the Kellogg proposal and declared that Great Britain had *never* used war as an instrument of national policy in the very same speech [2] in which he defended his action a few days previously in settling a difference with Egypt by an ultimatum backed by the threat of sending warships and seizing the Egyptian customs. Reminded of the Boer War he still stuck to his "never," and would no doubt have refused to qualify it, as did the immortal admiral in *Pinafore*, even if his audience had gone on to remind him of the "opium war" in China, the circumstances in which we gained control over Egypt, and various other little incidents that have helped the flag to follow trade. Signor Mussolini has enthusiastically endorsed the treaty, and would be justly indignant were it suggested that its provisions could cramp his style in Albania or Corfu. The Japanese, too, would find it perfectly compatible with the occupation of Tsinan Fu.

[1] See above, p. 325. [2] Delivered in the House of Commons, May 10, 1928.

Indeed it is no use trying to conjure the obstinate fact of imperialism by repeating the magic formula " sovereign rights." To begin with, even as an incantation, this merely lands us, as we have seen above,[1] in a collision of equal and opposite sovereignties, where the strongest prevails. What is more important, imperialism is not simply gratuitous wickedness : it is the product of material interdependence expressing itself through political anarchy. This situation cannot be met by treating the anarchy as something sacred. It can be met only by frankly recognizing the interdependence, with the resultant substitution of organization for anarchy in international relations.

In other words, so long as the Kellogg Treaty does not set up an international authority to decide what constitutes self-defence, nor provide machinery and obligations for settling disputes to serve as a test when taking this decision and as an instrument for dealing with situations that call for intervention,[2] its value as a *juridical* barrier to war is *nil*, for it leaves the contracting parties free to interpret it in so Pickwickian a sense as to justify every form of violence and imperialist iniquity known to international law. By the same token there can be no conflict between the Covenant and the Treaty, for the Covenant begins where the Treaty leaves off, and supplies the very means enumerated for

[1] P. 310.

[2] Mr Hughes, at the Havana Conference, put the case for intervention effectively, pointing out that countries might occasionally fail in the primary functions of government, with great loss and danger to foreigners and foreign property in their territory, thus necessitating action from outside. In the discussion on this question, amid a good deal of verbiage about sovereign rights and the equality of all nations, there were some rather striking expressions of the new " international " point of view.

Thus the Argentine delegate, while strongly opposed to the right of individual states to intervene, expressed sympathy with the idea of international intervention and proposed a resolution that would " leave the road open to the possible interference—I do not say intervention—of the international community which has been initiated with the Covenant of the League of Nations." At present there was an obvious tendency to place the solution of matters of an international character in the hands of the community of states, and he believed " this tendency would increase with the growth of world solidarity."

Señor Maurtua of Peru stressed the interdependence of international society and the existence of duties as well as rights. He pointed to juridical organization and arbitration as guarantees against tyranny and declared that the Covenant has established a " system of international interdependence. It has regulated ' collective intervention.' "

Señor Alvarez (Salvador) said intervention was the right of the strong to interfere with the affairs of the weak. " Legal means should first be established of ascertaining the facts; a decision should then be given, after which the weak nation should be made to do its duty." But before such a juridical inquiry and decision " a country has no right to intervene . . . simply because it owns fleets, cannons and armies." (These quotations are taken from vol. iv., No. 4—April 27, 1928—of the admirable *Information Service Bulletins* of the American Foreign Policy Association.) See also below, pp. 358-359, and Volume II., on the League and intervention.

giving effect and legal binding force to the good intentions the treaty declares.

(e) *The Kellogg Proposal and the Covenant*

Nevertheless there has been a great deal of discussion as to whether the Kellogg proposal is or is not compatible with the Covenant. In truth, as the above analysis shows, the two documents move on different planes. The difference between them is that between teetotalism—a moral undertaking accepted by individuals—and prohibition, which is legislation. The Kellogg proposal would fit neatly into the preamble of the Covenant, where the members of the League state the purpose for which they undertake the legal obligations laid down in the Covenant. This point is well put by Senator Borah, who, in an interview in *The New York Times* of March 25, 1928, replied when asked as to the effect of the Kellogg proposal on the League of Nations :

> " At present we have a network of treaties and understandings relative to peace—arbitration treaties, conciliation treaties, The Hague Tribunal, World Court, peace machinery of the League and peace machinery of Locarno. The effect of the Kellogg proposal is a solemn pledge to let all this peace machinery work."

In other words, the proposal may strengthen the moral basis of the Covenant, throw a fresh light upon its provisions, strengthen a certain view of its purpose and even on one vital point fill a gap in the present structure of peace.

Thus the renunciation of war in the Kellogg draft may be looked upon as a fresh " obligation not to resort to war " of the kind mentioned in the preamble, and as strengthening the first paragraph of Article XII., whereby the members of the League undertake to submit any dispute to arbitration, judicial settlement or the Council, and " in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council," the fourth paragraph of Article XIII., in which the members of the League agree that they will not resort to war against a member which complies with an arbitral award or judicial decision, and the sixth paragraph of Article XV., where they agree that they will not go to war with any party to a dispute which complies with a recommendation made unanimously (excluding the parties to the dispute) by the Council. And if the Kellogg Treaty is combined with the Covenant the right reserved by the members of the League under Paragraph 7 of Article XV. " to take such action as they shall consider necessary for the maintenance of right and justice," in case the Council fails to make a

unanimous report, must be read as in any case excluding the right to resort to force. That is, the Kellogg pact closes the gap in the Covenant and rules out war between all the signatories, just as the Locarno treaties have ruled it out between Germany and her neighbours. For this provision, it must be noted, becomes a reality in conjunction with the Covenant, for the simple reason that the parties are not allowed to interpret the Treaty for themselves but have the right to appeal to the Council. It is the Council which will say whether the obligation to renounce war is being infringed or in danger of infringement, whether on the plea of self-defence or any other excuse. The members of the League could agree to regard violation of the Kellogg pact as equivalent to the violation of the Covenant or Locarno treaties (see Volume II.).

The capital fact to note is that in the Covenant states have given up the old anarchic practice of deciding for themselves whether or not to resort to force and have agreed to this point being settled internationally through the Council as representing the organized society of nations. In other words, international society through the League has reached the same stage of legal evolution as municipal society: the individual state has transferred to the international community the cherished right of deciding when it may fight in self-defence.[1] But obviously, as in municipal society, the right of individual self-help is surrendered only in return for the acceptance of the collective duty of protection. In other words, states surrender to the League the cherished right to decide when they may resort to force in self-defence only in return for the League's accepting the obligation to protect law-abiding states. These two aspects of the problem are inseparable, and together constitute precisely the difference between anarchy and law, between the pre-war fictitious community of nations when war was the *ultima ratio* and the new organized world society where force must be subservient to justice.

Again, take the second article of the Kellogg draft. In the draft by itself the undertaking to settle all disputes peacefully is, as we have seen, no real obligation. But in conjunction with the Covenant it strengthens and gives point to the obligation to refer all disputes to arbitration, judicial settlement or inquiry by the Council or Assembly, and provides a stronger basis to the movement for recognizing the compulsory jurisdiction of the Court and concluding all-in arbitration treaties. On this point, too, the

[1] There is a partial exception to this rule in the Locarno treaties, which on this point may be regarded as incompatible with the spirit, if not the letter, of the Covenant. See Volume II.

Covenant is a system for giving effect to the purpose expressed in the Kellogg draft.

(f) *The Renunciation of War and the Principle of Sanctions*

We have seen that the members of the League collectively determine whether or not a state resorting to force can legitimately plead self-defence, and have set up an organ—the Council—to represent the community for this purpose, as well as established a system of obligations and machinery for the settlement of disputes, which, by supplying an alternative to war for the solution of international controversies, reduces the likelihood of resort to force and at the same time supplies the Council with certain objective criteria and methods for determining whether or not a state is guilty of resort to war in defiance of its Treaty pledges.

But the Covenant, as we have seen, goes further, and with the collective assumption of the right to decide whether or not self-defence may legitimately be invoked has logically and inevitably coupled the duty of collectively protecting a law-abiding state against a Covenant-breaker. Although this is juridically a strict analogy to the development of law in municipal society, it is the very point at which the outlawry of war school violently part company with the League. In their view all forms of force in international relations are synonymous with war, and the collective duty to coerce a Covenant-breaker means " organizing war against war." They further argue that international society must, in the last analysis, rest on the good faith of its members, and that if they cannot be trusted to keep a pledge *not* to go to war they certainly cannot be trusted to honour an obligation to go to war on behalf of one of their number.[1]

It is obvious that in the last analysis any society must rest on a certain minimum of good faith and good will in its members. But it is not necessary or even wise to base a proposed social structure on the assumption that all the members will always keep faith,

[1] A second argument of the outlawry of war school is that you cannot distinguish aggressive from defensive war. This is, of course, a flat contradiction of their own argument that " self-defence " and " war " are two different things. This point is discussed in detail in Volume II., which is concerned with the practical working out of the principle of " sanctions." The short answer is, that whereas it is impossible to distinguish between defence and aggression in an anarchic society, it is possible in a politically organized and legally developed society. Neither the political organization nor the legal system of the League are perfect, but they will serve, and they are but a beginning. And any attempt to organize the existing nations must deal with the fundamental problem of substituting collective protection for anarchic self-help or give up altogether; many of the most important members of the League would break it up and return to the pre-war system of alliances rather than abandon the principle of " sanctions."

coupled with a declaration that if anyone breaks faith he must be allowed to do so with impunity. In the view of the framers of the Covenant, most nations most of the time will faithfully carry out their obligations and, in particular, will take the obligation to keep the peace so seriously that if any member of the community resorts to force they will not stand by indifferent, but will consider it a moral and legal duty at least to boycott such a state until it returns to the ways of peace.

There are, in fact, only three possible courses: the first is to return to the pre-war state of anarchy, when any country could resort to force at discretion on its own view of self-defence. This is a purely reactionary measure, but it is, in fact, what the outlawry of war school propose when they suggest taking the "sanctions" out of the Covenant, for with the duty to protect law-abiding states would inevitably go the right to determine whether a state can legitimately plead self-defence when resorting to force.

A second possibility is to propose a treaty by which the contracting parties would forswear the use of force in their mutual relations absolutely and for ever, for any purpose, *including self-defence*. This, in fact, would appear the logical conclusion of the argument of which the outlawrists are so fond, that the one pledge that states can be relied upon to keep is the pledge not to go to war. Only, as we have seen, the fine fervour for simplicity, directness, a frontal attack on war, and all the rest of it, goes by the board at this crucial point, and Dr Morrison and his friends indulge in the very technicalities, hair-splitting and subterfuge of which they are so scornful. The reason rather pathetically suggested by Dr Morrison in his book is that he and his friends, while proposing nothing less than a world revolution by the casting out of war, are afraid lest they may be called pacifists!

And yet they cannot be blamed for refusing to make this proposal, since it is quite obviously not practical politics. The growing interdependence of nations has brought increasingly intimate and varied contacts. Therefore international relations have become more important than ever, and force can be eliminated as a method of conducting such relations only if it is replaced by an adequate substitute, which in this case can only be a high degree of transnational and supernational organization. This is dimly glimpsed by the outlawrists—Dr Morrison keeps repeating that war can never be fully outlawed until international law has been codified and his court with affirmative jurisdiction is functioning, and even mentions world government as the logical ideal—but they offer

neither a sufficient degree of organization nor the real elimination of anarchic force, while claiming to do both.

The third course is that adopted by almost the whole civilized world in the Covenant—namely, the surrender to the community of the right of deciding when force may be used in self-defence in return for the duty of the community to contribute to this force; or, in other words, the substitution of international protection for national self-help. This method is practicable, for it has been practised for nearly a decade, and indicates the lines along which the world may gradually and progressively be rid of force for other purposes than the keeping of order within states.

We have seen why sanctions are an inevitable and fundamental element in international organization. Let us now see to what results we should come by adopting the view of the outlawry of war school and leaving them out. The object of the outlawry of war movement is so to change international law as to eliminate the institution of war. But what is the position of war in international law? International law (1) found war in existence and states going to war when they saw fit. International law simply accepted these facts, and in addition to trying to temper the severity of war (2) endowed it with certain legal effects, and (3) defined the status of belligerents and their relations to neutrals.

The Covenant, as we have seen, deals with the first point by abrogating the right of national self-help. It also deals with the second by denying the right of conquest (Article X.). It deals with the third point by not allowing the Covenant-breaker to enjoy the status of a belligerent *vis-à-vis* neutrals so far as the members of the League are concerned.

The outlawry of war school, as we have seen, leave the institution of war precisely where it was before on both the first and second points. On the third point, by refusing to recognize sanctions, they insist in effect that a state unlawfully resorting to war shall nevertheless enjoy the status of a belligerent and the rights of a belligerent *vis-à-vis* neutrals. Now the legal relationships between belligerents and neutrals are based on the idea that belligerents have the right to make war for whatever reason they began it, and that neutrals therefore must remain on friendly relations with belligerents and, notably, allow them to trade, raise loans on their territory, and generally enjoy such material and moral support as their success in the war enables them to secure.

With the increasing interdependence of the world the attitude

of neutrals to belligerents may be of decisive importance.[1] When the United States were neutral in the world war, for instance, they took the view that they could sell munitions to any belligerent that could buy them and thereby proved of immense assistance to the Allies. It would have been an equally legitimate interpretation of neutrality, and one strongly urged by the Germans, to refuse to sell munitions to anyone, and this would have proved of equally great advantage to the Central Powers.

In the view of the outlawry of war school the society of nations is still a number of isolated units, and if two or more go to war the others remain aloof and passive and are "out of it." This they consider is the proper attitude, and they condemn what they think is the "active" obligation to "organize war" against a belligerent condemned as an aggressor.

But from the point of view of the members of the League the community of nations is one interdependent society, bound by a number of legal, economic and moral ties. If one member runs amok and resorts to force, in defiance of its obligations, it should not be allowed to enjoy the moral and material support resulting from friendly relations with the law-abiding nations. The least the latter may do to show their condemnation of its crime is to sever all relations with it—that is, instead of continuing active help to adopt an attitude of passive disapproval. The boycott and even pacific blockade are not, even in the old pre-war international law, acts of war, and are even less so when they are undertaken internationally on the basis of treaty obligations directed solely to restoring peace.[2]

From this point of view the insistence of the United States on its neutral rights against the League and on behalf of a Covenant-breaker appears as a selfish desire to earn blood-money out of war, and as a standing temptation to would-be law-breakers to gamble on the support of the moral and material power of the United States for their breach of the peace.

(g) *The Real Effect of the Kellogg Proposal*

The real effect of the conclusion of such a treaty as that proposed by Mr Kellogg is to release the moral force of the United States. So far as any generalization can sum up a big and complex situation, it is broadly true that since the war the United States has steadily been accumulating power and losing prestige. In

[1] This argument is throughout directed to the legal aspect; as a matter of political probability quite apart from the Covenant it is extremely unlikely that there will be any important neutrals in future wars. See Volume III.

[2] See below, pp. 359-363.

1918-1919 her moral authority was enormous: ever since it has been steadily ebbing away year by year, while at the same time the material importance of the United States has bulked ever larger in the eyes of the rest of the world. Now at last American public opinion is visibly stirring under the consciousness that there is such a problem as securing peace and that since the world war there is a moral duty of civilized nations to do something about it. Paradoxically enough, both the Big Navy Bill and the Kellogg proposal are signs of a return to active international life. In the minds of those who support the Kellogg proposal in the States it is only a first step, and the successful taking of this step will inevitably mean a strong movement in the United States for further positive peace measures in order to give effect to the Kellogg initiative.

Although governments are left legally free under the Treaty to "carry on" as before, it is reasonable to hope that its conclusion will leave civilized opinion more sensitive than before to aggressive or obstructive policies, more impatient of anarchic refusals to arbitrate and sophistic attempts to reconcile devotion to peace with the retention of large armaments, the right to make war, and the methods of ultimata, *coups de force*, and armed intervention.

And the conclusion of some such treaty between America and the chief members of the League, after long discussions of its relation to the Covenant and the aims for which the League was founded, will build a bridge between the United States and the League in the securing of world peace. It will force the outlawrists to take broader and longer views—to learn, that is, that political and legal organization always have gone, and inevitably must go, hand in hand, since they are both essential and inseparable elements in the organization of any human society, and that they must temper their zeal for peace in the abstract with a little Christian charity towards the peace efforts of other nations in the concrete. Their other two aims—codification of international law and a court with compulsory jurisdiction—can be realized only by co-operating with the nations which are already members of the League, and this means they must take the form of American adhesion in some form to the existing Court and the existing work on codification.

This process of adjustment has already begun. Mr Kellogg in his interpretation of his proposal said it was self-evident that "the violation of the multi-lateral anti-war treaty through a resort to war by one party thereto would automatically release the other parties from their obligations to the treaty-breaking state," and

has inserted a clause to this effect in the preamble to his revised draft. This interpretation meets the principal difficulty felt by the French and others as to the compatibility of the draft treaty with the Covenant: if a state violates the treaty renouncing war the other signatories are released from their obligations *vis-à-vis* that state, and so can carry out their obligations under the Covenant to coerce that state into restoring peace (Mr Kellogg does not explain what would happen if the state resorting to war alleged self-defence, since according to his own interpretation the other signatories would not have the right to question this plea. This, however, is not a difficulty in the case of members of the League, who have given up Mr Kellogg's sovereign right of deciding for themselves when they may resort to war in self-defence and agreed to take the opinion of the Council).

Senator Borah has gone even further, and stated in an interview in *The New York Times* of March 25, 1928, that:

"Another important result of such a treaty would be to enlist the support of the United States in co-operative action against any nation which is guilty of a flagrant violation of this outlawry agreement. Of course, the government of the United States must reserve the right to decide, in the first place, whether or not the treaty has been violated, and second, what coercive measures it feels obliged to take. But it is quite inconceivable that this country would stand idly by in case of a grave breach of a multilateral treaty to which it is a party. . . . Of course, in such a crisis we would consult with the other signatories and take their judgment into account. But we should not bind ourselves in advance to accept their decision if it runs counter to our own conclusions."

It is difficult to exaggerate the importance of this statement coming from Senator Borah, who hitherto has been a bitter opponent of the very principle of League sanctions and an ardent outlawrist in the Platonic and isolationist sense described above. An immediate natural result of the conclusion of a treaty on the Kellogg lines would be provision for conferences between the signatories whenever in their view events threatened the violation of the treaty. A similar provision already exists in the Washington four-Power Convention. But when the civilized nations of the world had generally adhered to the treaty, the obvious and natural course would be for the signatories who were members of the League to leave this function of conference in the hands of the Council, since it coincides with the duty conferred upon the Council by the Covenant in times of crisis.

In general, as *The New York World* has put it:

"The result of the year's discussion is that M. Briand has brought Mr Kellogg bang up against the old fundamental question: what does the United States

propose to do about the League of Nations? Once you begin to talk about peace there is no way of avoiding that question. . . . M. Briand has led Mr Kellogg around by polite but perfectly logical steps to a point where the proposal to 'outlaw war' has become really a proposal to define the policy of the United States towards the League. . . . It goes to show how impossible it is in human affairs to ignore the hard realities." [1]

In Europe the stir caused by the proposal has shown its great psychological importance. Opinion ranges all the way from enthusiasts who cry out in rapture at the prospect of a new heaven and a new earth, as though America had produced some complete and perfect alternative to the League and all that has been attempted through the League for the last eight years,[2] to the equally fantastic fears and suspicions of French nationalists as to the destruction of the Covenant and Locarno by the Kellogg Treaty. But slowly a more realistic middle view is emerging, which realizes the importance of enlisting the aid of the United States in the task of organizing peace and the value of this treaty in strengthening the moral basis of the Covenant, by repledging the workers for peace in all countries to their task and redirecting the attention of governments and public opinion to the fundamental aim of casting out armed force utterly and for ever as a method of conducting relations between civilized states.

The general effect, it may be hoped, will be to enable those who mean business with peace on both sides of the Atlantic to join hands in making things hot for their own nationalists and militarists, educating their respective public opinions in constructive internationalism and pressing for energetic and effective policies on the great aim of organizing the world for peace through arbitration, disarmament and the development of economic solidarity. This is bound to be a long and gradual process, but at this stage it is of great importance to secure general agreement on the principle that it must be directed primarily to abolishing international anarchy by excluding from international law the right to go to war and the status and rights of belligerents, and setting up in their place international institutions for co-operation and peaceful settlement of disputes.

[1] *New York World*, April 11, 1928.

[2] Which is as though a man who declared "I will buy that car, spot cash," but sets aside no money for the purchase and makes no move to approach the dealer, should be declared more of a motorist than his neighbour who has actually been driving the car in question for some months, has already paid several instalments on it, and is saving to pay the rest.

THE LEAGUE OF NATIONS AND INTERNATIONAL LAW

The coming into force of the Covenant has introduced changes so profound in the legal relations of the whole civilized world, except the United States, the Soviet Union and Turkey, that their implications have not yet been grasped by politicians and public opinion steeped in pre-war traditions, nor, for the most part, by the jurists, whose profession frequently (but by no means always) accustoms them to wait upon and even to resist, rather than promote, change.

Changes in the Subjects of Law

In the first place the League has added fresh complications to the already involved question of the subjects of international law. The new organization has, indeed, set the international lawyers a pretty problem, over which discussion is still raging. It is generally recognized as a subject or person in international law, but there is no agreement on its status. Thus Birkenhead, Larnaude and Oppenheim assert that it must be classed as an international person *sui generis* and deny that it is a confederation, although admitting that it resembles that type of organization, while Hall and Schücking and Wehberg contend that it is a confederation, although of a peculiar type. Each side gives lists of authorities holding variants of both views. Schücking takes his definition from Georg Jellinek's standard work, *Allgemeine Staatslehre* as follows :

" Confederation is the permanent union based on agreement of independent states for the purpose of protecting the territories of the union externally and maintaining peace between the states of the union internally. The pursuit of other aims may in addition be agreed upon. Such unions require a permanent organization for the fulfilment of these aims." [1]

Schücking adds to this definition, for the application of which to the League of Nations he adduces powerful arguments, the illuminating remark that : " The theory as to what constitutes a confederation is one of the most debated in public law," and there the matter may well be left in this book. But it should not be thought that these definitions are mere quarrels over words. No less an authority than M. Max Huber,[2] the Swiss judge in the Permanent Court (President between 1925 and 1928), points out that

" this legal view [of the League as a confederation] is constructive. It urges the League on in the direction of consolidating and extending its competence.

[1] Cited by Schücking and Wehberg, *op. cit.*, p. 103.
[2] Quoted by Schücking and Wehberg, *ibid.*, p. 108.

The science of jurisprudence should not merely give legal expression to what exists but also have its own value-judgments of what is to be, and try to win recognition for these judgments in law within the limits laid down for jurisprudence." [1]

In addition to its general nature the League, once its character as a person or subject in international law is recognized, raises a whole crop of puzzles as to its powers and attributes—its relations to member and non-member states, the character of Assembly and Council decisions, the protection of minorities, the mandate system and where "sovereignty" over mandated territories resides (for by Westlake's theory, quoted above, jurists are determined to find it somewhere and have been sorely troubled at their inability to determine its location), its functions in the Saar and Danzig, the status of its officials and agents and of national representatives accredited to the League—are so many problems in international law. Some of them we shall meet in later chapters, others may be left to specialists. All of them are described and discussed exhaustively, with admirable sobriety of detail and boldness of vision, by Schücking and Wehberg.[2]

AND IN ITS BASIS

In the second place the founding of the League has converted most of the largely fictitious community of nations into a real international society, with a definite organization and permanent institutions, the whole based on common legal obligations overriding all other treaties concluded previously or to be concluded in the future. This fundamental fact alone denotes an enormous advance, for *ubi societas, ibi jus est.*

(a) *The Legal Effect*

What this means juridically is brought out by Lord Birkenhead,[3] who says :

". . . large domains of sovereignty have been signed away in advance by many states in the Covenant, the League minority treaties, etc., and this is forcing a gradual recognition of the statement . . . that the complete sovereign independence of states is not an essential part of their jural relationships."

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[1] It must be added that Judge Huber does not himself believe that the League actually possesses the attributes of a confederation, although he thinks this view a useful working hypothesis when studying the League. His own view is quoted and controverted by Schücking and Wehberg, *ibid.*, pp. 106-107.

[2] See below, pp. 482-486, for a further discussion of the nature of the League. See also "The League of Nations and the New International Law," by J. E. Harley, and "What is the League of Nations?" by P. E. Corbett, in the *British Yearbook of International Law*, 1924.

[3] *Ibid.*, p. 33, footnote.

The matter is put even more strongly by J. E. Harley,[1] writing after the Covenant had been published, but before the League had come into existence:

" Certain attributes of sovereignty formerly possessed by each member of the League as it stood aloof from all others have been voluntarily transferred or delegated to the organs of the League. The most important of these are: the right of conquest; the right to make war at will; and the right in all cases to remain neutral. The general change effected by the Covenant is thus expressed by Dr Quincy Wright, a leading younger student of international law:

" ' . . . The Covenant when put into operation will modify international law though less in its specific rules than in certain assumptions upon which they have heretofore been supposed to rest.

" ' By accepting the League, states recognize that their existence depends upon the general maintenance of law, and consequently that they must prefer the claim of that law for defence, as against the lure of an immediate national profit. Thus, though international law will continue to aim at preserving the independence and autonomy of states, it must assume its own preservation is more important. It follows that international law can no longer be conceived by text writers as a series of deductions from an assumed " fundamental right of states to exist." The responsibility of states to assure the existence of the law will have to be conceived as even more fundamental. . . .

" ' The Covenant recognizes that states cannot survive where sovereignty can override the law. As the price of existence, states must accept definite responsibilities for the maintenance of law. Should this conception, about to be formally accepted, become instinctive in our civilization, the time might come when the chapters on war and neutrality, which overburden text-books on the law of nations, could be relegated to historical appendices.' "

A similar view, but taking account of the fact that the United States did not become a member of the League, is expressed by Bruce Williams[2]:

" If the menace of exaggerated and unjustifiable measures of self-preservation on the part of states were to be eliminated, was it not essential that the law be expanded by creating adequate international guarantees of state existence and security? Should not the law itself be strengthened by adding to it that constituent of real law which would impel respect and obedience to its commands and precepts? And should not the existing practice of leaving international disputes to settlement by force, initiated at will by individual states, be superseded, at least in part, by obligatory processes of international justice? Such were some of the demands put forward for reconstructing and developing the system of international law which prevailed at the outbreak of the World War.

" Within certain limits an effort was made to promote development along these lines through the Covenant of the League of Nations. . . . The League Covenant is a treaty to which the vast majority, but not all, of the members of the international community are parties. As such, it has produced important changes in the legal relations of its members; but from a strictly legal view-point,

[1] *Op. cit.*, pp. 42-43.
[2] *Op. cit.*, pp. 22-23.

it has left unchanged the general body of the law of nations.[1] Yet if we are seeking to trace the growth and strength of an international opinion which advocates changes in the international legal order, the most striking contemporary expression of this opinion was certainly manifested in the creation of the League, and the response of states to the system thus set up is of vast significance in any study of the trend of international legal institutions." [2]

(b) *A Practical Consequence*

One practical consequence of this new constitutional basis for jural relations between most civilized states is that conventions concluded by members of the League all refer back to the same starting-point—namely, the Covenant—and generally include references to the Permanent Court for interpreting the agreement in question in case of need, or in some other way take account of League machinery and obligations for the execution of the treaty or convention or whatever it may be. Moreover, technical conventions generally include the United States, and the Soviet Union and Turkey are co-operating to an increasing extent in the League's non-political work, so that in this field the new basis for international relations that is being laid is practically universal. As for political agreements providing for peaceful settlement of disputes and occasionally also mutual support against aggression—the most conspicuous instance are the so-called Locarno treaties—they generally refer explicitly to League obligations and bodies, such as the Council, Assembly or Permanent Court. Here, too, the United States, through their co-operation in the Preparatory Commission for the Disarmament Conference, the general declaration condemning war that the Administration proposes should accompany the renewal of the Root arbitration treaties,[3] the

[1] Mr Williams adds in a footnote:

" Note, however, the tendency toward the development of penalties as discerned by Professor Hyde: ' With or without the instrumentality of the League of Nations, or the processes developed in the Covenant thereof, the society of nations appears to be no longer disposed to leave merely to the mercies of an aggrieved state, whether strong or weak, and to the application of penalties of its own devising, the international law-breaker whose offence is deemed to have attained the character of an international felony' (*International Law*, i., p. 11)."

[2] Note how closely these descriptions of the changes in international law introduced by the League resemble the views of Westlake and others quoted above, pp. 311-313, on the necessity for subordinating the " right of self-preservation " to the control of law. See also below pp. 357-363, and above, pp. 336-339.

[3] These treaties in the revised form proposed by the United States have moreover dropped the old reservation concerning honour and vital interests, and substituted " domestic jurisdiction." This was a change first introduced by the Covenant and generally followed in post-war arbitration treaties. The practice has not been universal, and a good many politicians, in Great Britain and elsewhere, still talk about honour and vital interests, but it is plain that this vague and stultifying reservation is going into the discard. This is a good example of how treaties between a large number of states may affect the practice even of non-signatories, and so become part of custom, and thereby eventually a new rule in international law.

suggested renunciation of war pact and the idea of resort to war in defiance of obligations to arbitrate as a definition of aggression, as well as the Soviet Union through the conclusion of non-aggression treaties with members of the League, are being drawn into the political current and forced to correlate their obligations and attitude to the system being set up between the members of the League. A League state can no longer take refuge in sovereignty, for the obligations of the Covenant enjoin certain procedure, including regular co-operation, discussion and the submission of all disputes without exception to some form of peaceful settlement and the obligations of the Covenant are fundamental.

Thus the foundation of the League has, to some extent, made good the defect pointed out by J. L. Brierly and quoted above—namely, that " the law remains formally based on an individualist theory of the relations of states which the states themselves have to a very great extent discarded." On the other hand, it must be admitted that the reservation in the Covenant (Article XV.) concerning " a matter which, by international law, is solely within the domestic jurisdiction " of one party may act as a barrier to the transference of fields of international intercourse from the " non-legal " domain to the legal, and that the problem of revising treaties and generally changing the *status quo* has been complicated by the existence of the League.[1]

(c) *The League and the Status Quo*

In this connexion Hall [2] suggests that any member of the League should " be empowered to bring the case for the voidance of a treaty before the Permanent Court of International Justice."

Professor P. J. Noel Baker, writing in the *British Yearbook of International Law for 1925*,[3] holds that the Court already has this power, and that any state could bring before it an application for the voidance of a treaty under the doctrine of international law

[1] See below, pp. 465, 470-473, and Volume II. on " The Peaceful Settlement of Disputes " and " The Development of International Law." *Cf.* also Brierly, *British Yearbook of International Law*, 1925, p. 8, in an article entitled, " Matters of Domestic Jurisdiction ":

" Article XV. of the Covenant of the League of Nations has introduced into the terminology of international law a phrase which already shows signs of becoming a new catchword, and which is capable of proving as great a hindrance to the orderly development of the subject as the somewhat battered idols of sovereignty, state equality, and the like have been in the past. In fact, journalists and politicians together have already succeeded in creating an atmosphere in which many people seem to be convinced that the maintenance of a White Australia, or the right of America to frame her own liquor legislation, is somehow bound up with the inviolability of ' domestic jurisdiction,' and we are warned against any encroachment on the province of the new fetish, about which, however, little seems to be generally known except its extreme sanctity."

[2] *Op. cit.*, p. 407.

[3] Pp. 98-100.

known as the *clausula rebus sic stantibus*. This doctrine, he admits, has often been abused in the past and is frequently considered dangerous by writers on international law. Clearly if a state is itself to be the final authority on whether conditions have so changed since it concluded a treaty that it is justified in denouncing that treaty the doctrine is open to very serious objections. But it is equally clear that the matter becomes very different if a state can plead for release from its treaty obligations merely on the ground that circumstances never contemplated when the treaty was concluded have arisen that make its provisions inapplicable and leaves it to a body like the Court to decide whether or not this plea is justified. In this case a legal method of facilitating change would have been introduced into international law very similar to that advocated by Professor Brierly in the passage quoted above.[1]

On this subject Professor Lauterpacht remarks that the new international order represented by the League and the Permanent Court makes it possible to apply the general principle of law concerning the voidance of contracts that it has hitherto been impossible to apply in international law because of the unorganized character of international society.

"For it seems that the Permanent Court will be competent to deal with the purely legal aspect of the *clausula*, namely, with those cases in which a State will claim the right to be relieved from an obligation on account of supervening impossibility of performance, or of frustration of the object of the treaty as a result of the fulfilment of an express or implied condition. The Court will be in a position to entertain requests of this kind notwithstanding the fact that the *clausula*, even in its purely legal aspect, is neither a customary nor a conventional rule of international law. For international law applicable by the Court does not consist solely and exclusively of rules expressly recognized by States; also, 'the general principles of law recognized by civilized nations' are, according to Article 38 (3) of the Statute, applicable as binding rules of international law when there are no conventional or customary rules at hand. It is as a generally recognized rule of law that the Court is competent to apply that part of the doctrine which is juridical in its essence."[2]

The Court would have to determine especially how far the danger to existence, independence and development comes within the purview of impossibility of performance or frustration of the implied object of an international transaction, but will not be able to give a general interpretation to these concepts, since it cannot exercise the function of an international legislature. This political function must be exercised in some such way as that indicated in Article XIX. of the Covenant:

[1] P. 304.

[2] *Op. cit.*, p. 173.

"Such a development will leave the Permanent Court to apply, free and unhampered, the strictly legal aspect of the doctrine of the *clausula rebus sic stantibus* which will then become a bulwark of international law instead of being one of its chief weaknesses."

It must be added, with reference to Professor Lauterpacht's remark about Article XIX., that the general political tendency hitherto, under the pressure of France and the new states, has been to keep this article as much in the background and as near to a dead letter as possible. But with the entry of Germany and in proportion as war-time moods and conditions grow more remote there is no reason why both the legal and the "legislative" possibilities indicated above should not be taken up by public opinion and governments and so made an effective part of international law.[1]

AND MODES OF DEVELOPMENT

In the third place the League has given a great impetus to the development of international law. As Professor Manley Hudson has put it:

"The first five years following the Treaty of Versailles saw the establishment of a permanent and continuous machinery for general conference by fifty-five nations. An agency exists, at last, for assembling international conferences and for enabling them to work smoothly and effectively when assembled. Periodical meetings of representatives of the Powers have now become an accepted thing, and whereas only two conferences at The Hague resulted from a generation of effort, each of the annual conferences since 1919 has included the representatives of more Powers than were represented at either of The Hague Conferences. A revolution in method has occurred, and if it is designed chiefly for the ordering of the political relations of states, it promises also much greater co-operation in the moulding and developing of the law of nations as well. If the new method has not yet been accepted universally, its influence promises to be far-reaching and the consequences to international law may be very great. It has become possible, at last, for attention to be fixed on the legislative needs of world society; willingness and energy may be mobilized to meet them; and the co-operative legislative effort which is beginning may make over the international law of the twentieth century."[2]

The sheer volume of international conferences and committees meeting at Geneva and all forming part of a single continuously operating system, with permanent machinery at its command, backed by firm legal obligations and strong elements of public opinion, is an extraordinary contrast to what obtained before the war. It is therefore not surprising that in the first eight years

[1] See the discussion "On Peaceful Change of the *Status Quo*," in Volume II. and below, pp. 465, 470-473.

[2] "The Prospect for International Law in the Twentieth Century," *The Cornell Law Quarterly*, vol. x., No. 4. Also issued as a reprint.

of its existence the League should have produced some sixteen technical conventions, most of which are already in force, and the Labour Organization twenty-five labour conventions. These conventions are framed so as to " dovetail " with each other and the Covenant (thus the transit and economic conventions take account of the need for controlling the traffic in opium and dangerous drugs: all the conventions are, of course, based on the Covenant, as explained above), and are building up a whole new legal system governing the relations, not only of the fifty-five members of the League, but in many cases of non-League signatories as well. In addition, a committee has been set up for the codification of international law, and this work is gathering momentum, arousing an ever greater interest, and promises to produce really important results.[1] Last, but not least, the Permanent Court is dealing with a greater volume of business each year. In the view of many jurists the best way to develop law is to appoint judges and set them to work.

Thus the second defect pointed out by Professor Brierly—namely, the failure to provide methods of enlarging and adapting international law to the changing needs of modern society—is being met.

EMPHASIS ON THE LAWS OF PEACE

(a) *Reasons and Fruitfulness of League Work on the Laws of Peace*

In the fourth place the founding of the League has shifted the emphasis from the laws of war to the laws of peace. The League itself, as has been pointed out above,[2] was partly a revolt against the conceptions of The Hague Peace Conferences and a determination to start on different lines. The Covenant is concerned entirely with organizing a society at peace and providing deterrents from resort to war, but does not concern itself in the slightest with the laws of war. On the occasions when suggestions have been made at League meetings—notably by the Jurists' Conference that drafted the Statute of the Court, whose report was submitted to the First Assembly—that the League should concern itself with revising the laws of war, the proposal has invariably been rejected on the express ground that the object of the League was to organize the world for peace and that it was useless to attempt to regulate war; war may be prevented, but once it breaks out it is likely to break all rules meant to limit its fury. The same rule was laid down for the guidance of the committee on the progressive codification of

[1] See the chapter on " The Development of International Law " in Volume II.
[2] See p. 88.

international law. The whole of League work, whether on disarmament, political subjects or technical questions, and all the resulting League conventions or treaties signed by forty to sixty states, have been based on this idea. The reasons why this policy of concentrating on the laws of peace and refusing to touch the laws of war was adopted by the League of Nations are set forth in an article published by Professor P. J. Baker in the first number of the *British Yearbook of International Law* (1920-1921). Professor Baker was at that time an official of the League Secretariat, and, as the accuracy of his forecast shows, wrote with inside knowledge. The reasons are briefly: (1) Disgust with war and the methods that failed to prevent war, coupled with belief that the way to get peace is to prepare for it; (2) The fact that war now concentrates the whole energies of the state, and so abolishes the distinction between combatants and non-combatants which has hitherto been the basis for laws of war, as well as arouses such ferocious hatred as to make laws futile; (3) The virtual non-existence of neutrals, both as a practical prospect and as the legal result of the Covenant, thus removing one of the main objects—relations between belligerents and neutrals—of laws of war; (4) The rapidity with which the nature of war is changing owing to technical developments and the impossibility of framing laws that will keep pace with these changes.

(b) *The Exception that proved the Rule*

The only exception to the exclusive preoccupation of the League with the laws of peace—and it is of the kind that proves the rule—is the Protocol concerning the prohibition of the use in war of poison gases and bacteriological methods of warfare. This Protocol was tacked on to the Arms Traffic Convention of 1925 at the insistence of the United States delegation, which was so great as to override the objection duly made that the League was not concerned with the methods of warfare but only with preventing war. The provision was therefore inserted in the League Convention to please a powerful non-League state. Its subsequent fate is even more illuminating than its inception. When the proposal was made in the American Senate to ratify the Convention it was rejected owing to the lobbying efforts of the chemical industries in the States which had secured a vote in their favour at a " packed " meeting of the American Legion, which in this—as in so many other cases—was exploited by the type of politician or vested interest that uses patriotism as a last refuge. This result has led to a good deal of cynical amusement and pointed jests at the expense of the United

States, and has confirmed the view that legislating for what is to happen in war is a futile business.

(c) *Futility of Extra-League Attempts to tackle Laws of War*

This view is strengthened by examining what else has been done since the war to codify the laws of war. The rejection of the proposals of the Jurists' Committee that framed the Statute of the Court has already been mentioned. There was in addition a proposal put forward by a commission of jurists of the Principal Allied and Associated Powers represented at the Washington Conference in 1922 concerning the prohibition of the use of submarines in war in the way Germany had used them during the late war. This report was worked up into a treaty signed by Great Britain, the United States, France, Japan and Italy, and styled its provisions the "Established Law" as to submarines—law "established" by five states! It represents of course nothing but the views of the Allied and Associated Powers regarding Germany's all-too-successful use of the submarine weapon in the world war, and as such has small chance of winning general acceptance. To date it has not been ratified by any of the five Powers that signed it.[1]

[1] The question of revising sea law is attracting increasing attention. The matter is fully discussed in Volume II. Briefly, the situation is that there has never been complete agreement even on fundamental principles of sea law. The two great protagonists of opposing conceptions have been Great Britain, with a predominant navy and the point of view of a potential belligerent, and the United States, with a small navy and the outlook of a permanent neutral. The United States was involved in the world war and adopted in an extreme form the British view of belligerent rights at sea. Since the war she has won recognition of her claim to a navy equal to that of Great Britain. Meanwhile the British traditional view is becoming untenable owing to the development of submarines, aircraft and British dependence on sea-borne food and raw materials. Nevertheless the United States have reverted to their traditional view and Great Britain clings to hers, although neither is applicable to the present position of the respective countries. In France a distinguished French admiral has suggested a drastic transformation of sea law to the effect that the high seas should be declared free not only to shipping but to navies, and naval engagements be allowed only within territorial waters (extended to a zone of twenty-five miles from the coast). On top of this comes the fact that the legal position has been fundamentally altered by the obligations of the Covenant, which have abolished the rights of neutrality and set up a claim for the right of the League, acting collectively and as an international police measure for restoring peace on the basis of treaty obligations, not only to boycott but blockade a Covenant-breaker without this constituting a state of war. The only effective opposition to this view can come from the United States, but in that country there is a movement, with which the names of Senator Capper and Professor Shotwell are associated, that the President should declare that the United States would not protect the interests of her nationals attempting to trade with a state which, in the view of the Administration and Senate at the time, had been rightfully condemned as an aggressor. The discussion on pp. 340-341 above of the effect of a renunciation of war treaty and the quotation from Senator Borah will indicate the possibility of an agreement on these lines.

In general the facts seem to point to a solution on the lines long ago suggested by President Wilson—namely, "absolute freedom of navigation upon the seas outside territorial waters alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants" (One of the 14 Points, dropped at the insistence of Great Britain).

Two other efforts were also made at the Washington Conference. One was for a treaty banning all use of poison gas and analogous liquids in warfare. It was signed by the same five Powers and has been ratified by none. (It was in the first flush of enthusiasm after the signing of this treaty that the United States representative at the Arms Traffic Conference insisted upon the provision concerning gas warfare whose nature and fate have been described above.)

In a footnote to the fourth edition of Oppenheim's *International Law* [1] the editor, Professor McNair, points out that chemical warfare departments and research into the use of gases in future wars are still going full blast in all countries which possess these luxuries (including very prominently the United States), and draws the eminently reasonable conclusion that " gases of one kind or another as potential instruments of warfare have come to stay." He goes on to suggest that,

"unless international law is to abdicate its function of mitigating the severities of war, lawyers would be better employed in endeavouring, with expert scientific assistance, to eliminate the more inhumane gases than in attempts to ban all use of gas and analogous liquids in warfare."

It is, of course, a matter of opinion, but it may be submitted that human ingenuity could, without great difficulty, find more amusing ways of wasting the time of eminent jurists [2] than that suggested in this quotation.[3]

A third jurists' commission report, which unlike the other two was not even worked up into a treaty, has been pigeonholed by the governments to which it was referred for consideration—namely,

The members of the League might undertake to accept America's traditional view of the rights of neutrals in war if the United States would undertake some such *ad hoc* co-operation with the League in times of crisis as that suggested by Senator Capper.

Meanwhile Senator Borah is trying to secure a conference on sea law, and there is a similar movement in Great Britain. If such a conference were to concern itself with the fundamental issue of international police action (boycott and pacific blockade) against a state internationally condemned as an aggressor, it might seem a case for making an apparent exception to the League's abstention hitherto from concerning itself with anything but the laws of peace.

[1] Vol. ii., p. 277.

[2] All jurists are eminent, as was once pointed out by M. Scialoja, the witty Italian representative on the Council, who really can lay claim to the adjective; the words "eminent" and "jurist" habitually go together, like "buxom" and "wench."

[3] The League's way of tackling this problem has been to try to cut the connexions between the war offices and the chemical industries, and to get the latter to combine internationally, so as to give this powerful element of national life purely civilian and business aims, and so form it into a factor making for peace, not war. This example, described in Volume II., illustrates precisely the difference between organizing peace and preparing for war.

Great Britain, the United States, France, Italy, Japan and Holland —and there rests in peace. It purports to codify the laws of war for aerial warfare and, as quoted by Oppenheim,[1] is highly entertaining. Its guiding principle is that the distinction between "defended" places which may be bombarded and "undefended" places which may not be bombarded is out of date, and that instead bombardment is legitimate only when it is directed at

> "military forces, military works, military establishments or depots, factories constituting important and well-known centres engaged in the manufacture of arms, ammunition or decisively military supplies, lines of transportation used for distinctly military purposes."

No one knows, of course, what will be the development of aircraft in the next twenty or thirty years, let alone the economic organization of countries, and particularly the system of communications and distribution of power. It may, however, be safely predicted, on the basis of what has been achieved already, that bombing aeroplanes will be flying at anything from 150 to 200 miles an hour, and fighters at between 300 and 400 miles, and that air-raids will be carried out at heights of anywhere from 4 to 8 miles, accompanied by squadrons of fighters to beat off the defenders' air forces. The raiders will be blinded by searchlights and subjected to artillery fire from the ground, aerial "curtains" such as those employed in the late war, attacks by the defenders' fighting planes, etc. The bombers will carry bombs weighing several tons, and loaded with the most virulent poison gas or high explosive, and raids will often take place at night over towns shrouded in impenetrable darkness. How much aiming is to be expected at the objectives enumerated in the passages quoted, and who is to say whether a bomb that hits the West End was not aimed at Whitehall or, for that matter, Woolwich Arsenal? And if, as admitted by Oppenheim,[2] the distinction between combatants and non-combatants is disappearing, and if, as is surely a patent fact, the objective in modern war is to break the enemy's moral at home as much as shatter his forces in the field,[3] how can anyone believe for a moment that these proposed rules are anything but futile nonsense?

The International Law Association, a body of academically minded old gentlemen, has also produced a set of neat little rules for the guidance of those who drop death and destruction

[1] *Op. cit.*, pp. 369-371.
[2] See above, p. 317.
[3] See Volume III., and Philip Baker's *Disarmament.*

from the clouds. The " fundamental error " of these rules, says Dr J. M. Spaight,[1] is

" the assumption that the air arm will act merely as a subordinate of the older arms, that it will cling, as it were, to their skirt tails and do only what they do."

This is

" the most dangerous of assumptions . . . such rules as these will never survive the red-hot breath of actual war. . . .

" Air war will be a war on commerce, on capital, on credit. Its end will be far from being a purely military one. There is evidence abundant to overflowing in the statements of responsible statesmen and commanders that the air arm will be used for a purpose far wider than the mere destruction of *military objectives*. Its aim will be a political and psychological far more than a military one. It will seek by direct action to paralyse the enemy's higher administration, to interrupt his munitionment, to interfere with his life and business, to disturb and disorganize his productivity, to destroy his moral, to weaken his will and capacity as a national organism to continue the struggle.

" It is an entire misconception of the position to say that governments would be mad to use their air forces for this kind of operations instead of using them against the enemy's naval or military forces. Rather, to put it bluntly, given air power, given also the modern civilized world, highly developed industrially, financially, economically, the state of their minds should really be inquired into if they did anything else. It is only common sense to recognize that modern war rests upon a foundation which is now, for the first time in history, open to attack before a nation's land and sea defences have been broken down: that foundation being, first, . . . a vast organization of munitionment; secondly, the continuance of the economic and industrial life of the nation; thirdly, the maintenance of the national moral.

" To imagine that, because of any paper rule, this foundation will not be attacked is to dwell in a fool's paradise; and a fool's paradise does not cease to be such because its title-deeds are to be found in an international convention. No restrictive covenant can avail to prevent that which is in the nature of things. To ask air power to refrain from the ' direct action ' of which it is capable is to demand of it a self-denial to which there is no parallel in history. Every arm in turn has exploited its capacity to the full.

" It is not cynicism but simply the facing of the facts to say that whether ' direct action ' is resorted to or not will depend on whether it is likely to be effective; and how can anyone affirm that it will be ineffective until it has been tried? Does anyone really suppose that, if it is likely to be effective, it will not be tried simply because of the existence of a very debatable formula which makes military objectives alone liable to be bombed and these only when they can be bombed without the 'indiscriminate' bombing of the civil population?"[2]

There would really seem nothing to add to these pithy remarks, which constitute an unanswerable argument against any attempt whatever to provide rules for air war, since the latter is by definition

[1] Writing in the *British Yearbook of International Law*, 1925, of what he calls the " doctrine of air force necessity " (a proposed aerial twin to our old friend " military necessity ").

[2] *Ibid.*, pp. 4-5.

to consist in raids as destructive and terrifying as possible for the sake of disorganizing the enemy community and breaking up its moral. But old habits die hard, and Dr Spaight proceeds from this basis to suggesting rules of his own. There may, he says, be humanitarian objections to the doctrine of air-force necessity, but they would be met if the air power were willing to undertake to destroy non-military property only when innocent lives were not incidentally sacrificed.

" The nature of the limitation must be clearly understood. It relates to the destruction of *non-military* property only. The question of bombing military objectives is an entirely different one. In the latter case bombing remains legitimate (provided all due care be taken) even if innocent lives are lost in the vicinity of the (military) objective. But no similar latitude can be claimed or conceded in the destruction of non-military property. There would be no admissible precedent for allowing such concession to belligerency. Outside of actual battles and bombardments (to which the counterpart in air operations is the bombing of military objectives), the custom and practice of war have established for belligerents no right to shed non-combatant blood in the course of carrying out the destruction or devastation which the necessity of war allows." [1]

In other words, what is proposed is that air-raiders should destroy both military and non-military property and should kill non-combatants in the former but not in the latter. Dr Spaight attaches great importance to this distinction. He says :

" International law should be insistent upon this matter. It should refuse to countenance any departure from the principle that air-force necessity permits the destruction of *non-military property* only when non-combatants in the vicinity *have at least the opportunity to provide for their safety*, and that attack upon such property is absolutely banned when it must involve necessarily the sacrifice of innocent life. How exactly air forces will succeed in complying with such a restrictive rule, whether it will involve their attacking the property in question only under certain favourable conditions, in what precise manner they will ensure that the material or physical destruction does not involve loss of citizens' life, need not here be considered in detail." [2]

It will be the undying regret of one reader at least that Dr Spaight refrained from considering this interesting point in detail. Pending this consideration the following rules may be respectfully suggested :

There should be an international convention providing for sufficiently large and conspicuous sky-signs, illuminated at night, to notify what bits of property were military and which non-military, together with a system of notification by raiders of the hours at which they proposed to bomb such-and-such a piece of

[1] *Ibid.*, p. 6. [2] *Ibid.*, pp. 6-7.

non-military property in order to allow its inhabitants to evacuate it before " zero hour," provided they could prove that they were " non-combatants." These suggestions may sound to the irreverent rather like that of the old lady in *Punch* during the war, who complained that these spies were really too dreadful and should be made to wear some distinctive uniform. But it is submitted that they follow logically from the principles laid down by Dr Spaight: the one is as reasonable as the other.

It is a striking fact that these abortive efforts of a handful of states and foolish suggestions by a few individuals are all that has been attempted since the war on codification of the so-called laws of war,[1] and they have all, it is interesting to note, been the result of initiatives outside the League. They seem to demonstrate only one fact, and that is the desirability of forbidding all jurists to write on the laws of war who did not see active service in the last war!

RESTRICTION OF THE RIGHT TO GO TO WAR AND PROTECTION OF THE DUTY TO KEEP THE PEACE

Fifthly, the Covenant restricts the right of going to war and imposes the obligation to attempt to settle all disputes peacefully. This obligation is reinforced by a collective obligation to coerce a state resorting to war in defiance of its pledge to attempt to settle disputes peacefully. Thus the Covenant goes a long way toward realizing the fundamental reforms in international law that the war had shown to be necessary, and notably to remove the inherent contradiction between the so-called " right of self-preservation " deduced from sovereignty and international law. Under the Covenant a state cannot plead self-preservation as an excuse for resorting to war in defiance of Articles XII., XIII. and XV. On the other hand, it knows it will be protected by the other members of the League, if it abides by its obligations, against any state that attempts to violate them by war. Within the League there is a growing movement to make the prohibition against resort to war or acts of force absolute.[2]

(a) " *Sanctions* " *not necessarily War*

This is not the place to discuss the political working out of the legal obligation to coerce an aggressor, its relation in practice to the degree of universality of the League, the methods of peaceful

[1] Hudson (*International Co-operation*, pp. 120-121) says that the Washington Conference also set up a commission of jurists to consider whether " existing rules of international law adequately cover new methods of attack or defence resulting from the introduction or development, since The Hague Conference of 1907, of new agencies of warfare." The mandate of this commission was afterwards restricted, he adds, and its report sleeps in the archives of the foreign offices.

[2] See Volume II., and above, pp. 334-335, 342.

settlement of disputes, the problems raised by the domestic jurisdiction reservation, the "gap" in the Covenant, the movement for all-in arbitration and the outlawry of war, the removal of specific causes of unrest, the development of economic solidarity, the principle of national and cultural as well as religious tolerance, the changing of the *status quo*—all these matters are discussed in Volume II. Here it is necessary simply to insist on the fundamental nature of this obligation and its legal character. Juridically the obligation may be considered either as a development of intervention or pacific blockade, in the meanings given to these terms above,[1] or as war.

(b) *League Compulsive Measures short of War*

Thus Oppenheim considers that the action of the League in the Greco-Bulgarian dispute[2] amounted to "intervention." In general, he says:

"There is no reason why the League should not recommend that its members should employ any or all of these measures [retorsion, reprisals, pacific blockade] in support of the Covenant and the peace of the world. It is in these very circumstances that these weapons, being employed as 'a measure of international police,' are least likely to be abused, and such action is in accord with the frequent employment of pacific blockade by the great European Powers in the nineteenth century. And it is not only upon the occasion of a breach of the Covenant, actually committed or imminent, that these measures might be employed; for the League has a general jurisdiction to take, and advise the taking by its members of, such action as may be necessary to secure the peace of nations. . . .

"Action of this character by the League may vary from the mere offer of mediation or good offices to that dictatorial interference which amounts to intervention." [3]

In a paragraph entitled "League Retorsion, Reprisals and Pacific Blockade" he suggests that:

"While it is perhaps unlikely that the League will be concerned with retorsion in the mild sense in which that term is used in this work, there is good reason to expect that the League would, if necessary, not hesitate to request such of its members as were geographically and strategically best fitted, to institute *reprisals* or *pacific blockade* against a recalcitrant breaker of the peace. . . .

"Particularly suitable is pacific blockade as a League instrument, because to the extent that members of the League loyally supported its decision the blockade would tend to lose its chief defect in point of efficacy—namely, that the ships of third States must not be molested." [4]

[1] See pp. 297-301.

[2] *Op. cit.*, p. 107. See Volume II. for a full account of this dispute. Greek troops had already crossed the Bulgarian frontier when the Council told both sides by telegram to withdraw their troops to their own territory immediately and to notify within forty-eight hours that this had been done, and drew their attention to the serious results that would follow under the Covenant if these states broke their solemn obligations.

[3] Pp. 104-105.

[4] *Op. cit.*, § 52*c*, pp. 104-105.

A similar view is expressed by Lord Birkenhead :

" The question of peaceful intervention has recently been brought into prominence by the rights possessed in that direction by the League of Nations under the Covenant and under treaties containing Minority Clauses and, generally, from its character as an organization to achieve international peace. Jurists continue to disagree as to the exact scope of the right of intervention, but the tendency is towards agreement on the basis of the two clear grounds mentioned in the text [self-preservation and collective intervention in the interests of law and order], subject to this—that the creation by treaty of a definite organization through which the general body of States will act and the endowment of that organization with specific rights of intervention under certain treaties have tended to fuse two grounds hitherto considered distinct and not equally justifiable: (i) when undertaken by the concert of Powers, and (ii) when based upon treaty rights. Intervention by the general body of civilized States still continues, but not in its old form, that of action by the concert of Powers. For it is no longer conceivable that the Great Powers of Europe should claim, as such, any right to intervene in the affairs of other European States while there exists in the League of Nations a means to that end, specifically designed to meet the excuses which history has shown to be most commonly invoked to justify interference, accepted by almost all the States against which intervention might need to be directed, and demonstrably fairer and more effective in practice than the system of the concert of Powers." [1]

A footnote makes it clear that the author is thinking primarily of the action of the League under Articles XI. and XV.—*i.e.* a mild form of intervention not far removed from mediation and good offices. But as Oppenheim points out in the passage quoted above, such action may easily pass to intervention in a dictatorial sense or even to pacific blockade. Indeed there seems no reason why the view of these authors should not be extended so as to apply also to the action of the League under the last paragraph of Article XIII. and the whole of Article XVI.

(c) *The Difference between " Execution " and " War "*

This indeed is the view taken by Schücking and Wehberg,[2] who argue that :

" It is important not to fall into the error of the layman, who looks upon every exercise of force against a State by a political collectivity, such as the

[1] *Op. cit.*, p. 89.

[2] *Op. cit.*, pp. 91-92. *Cf.* also the following prophetic remark by Westlake, *op. cit.*, vol. ii., p. 4 :

" No force is used in war by agents having an international character in order to secure obedience to the law of the land. . . . If an international government were to arise, either by the authority of the Great Powers growing into a definite and recognized system or by any other means, the employment of force by such government would be comparable to its employment by the ministers of justice within a state. But that consummation is still far off, and until it shall be reached war cannot be described as an execution. Neither to the claims which form the reason or the pretext for war, nor to international law so far as it may pronounce such claims to be just, does war stand in the same relation in which an execution stands to the claims of a plaintiff or to the law of the land under which it is put forward."

League of Nations, as war. The complete idea of law includes the compulsion to obey it, imposed by force if all other means fail. This vindication (Durchsetzung) of the law against the resistance of a recalcitrant party, which further takes place by legally ordained procedure and on the basis of a legally established jurisdiction, is called execution. Even though this execution takes place by force, it is no war. For war has always been and to some degree still is the form of litigation established by international law (der völkerrechtliche Prozess) between equals who lack a compulsory court of law. Measures of compulsion, therefore, that are applied by a political collectivity on the basis of its constitution against a recalcitrant member of this collectivity, have not the true character of war, even although they may involve the methods of war. Anti-pacifist laymen may call this juristic hair-splitting. The experience that has been gained within states in the relations of the state to individuals shows that the difference between a violent conflict among equals and the execution of law by the state on its subjects is deeply rooted in human consciousness and is bearing good fruit. To-day, when a higher collectivity has been erected over states, and applies measures of force against a recalcitrant member, it is necessary to recognize and retain the distinction between such executory acts and war as a traditional legal institution of the law of nations. It is therefore not a case of ' compulsory League wars ' . . . when the Covenant empowers the League as a whole to intervene against the member that has broken the peace in violation of its obligations under Articles X., XII., XIII. and XV."

On the other hand, Oppenheim [1] is doubtful whether the more drastic of the various forms of action contemplated by the first paragraph of Article XVI.—which makes it obligatory to cut off relations with a Covenant-breaker—can be reconciled with a state of peace, and inclines to the view that they involve war, especially if they are held to include the duty of cutting off relations between a Covenant-breaker and states non-members of the League.[2] As for action by such states as may heed a recommendation by the Council under Paragraph 2 of Article XVI., to send military forces against a Covenant-breaker, Oppenheim expresses a general view in saying that :

" Whether the League itself may become a belligerent or not, cannot be regarded as settled yet; but that through its appropriate organ, the Council, it may recommend and induce some or all of its members to wage war there can be no doubt. The second paragraph of Article XVI. of the Covenant is as follows:

" ' It shall be the duty of the Council in such case [resort to war in disregard of Articles XII., XIII. or XV.] to recommend to the several Governments concerned what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the Covenant of the League.'

" A member of the League which decided to comply with such a recom-

[1] *Op. cit.*, pp. 106-109.

[2] But *cf.* the discussion on pacific blockade by the League and possible acquiescence in it by non-League states contained in League document A.14, 1927. The whole subject is discussed fully in Volume II.

mendation and use its armed forces in protection of the Covenant would engage in a war which would be governed by the same laws of war as any other war. There can be no doubt that war remains war, even when waged with the blessing of the League upon it. The Covenant of the League by stigmatizing wars originating in a particular manner—namely, in breach of the obligations of Articles XII., XIII. or XV.—and actively commending wars in defence of those obligations, has not altered, in point of law, the institution of war." [1]

It is difficult to see why boycott and pacific blockade (the latter specifically commended by Oppenheim as suitable for League action without involving war, the former obviously pacific), which are as far as most League members consider themselves bound to go by Article XVI., should not be compatible with peace, even in Oppenheim's view. But to make either effective there should be agreement between the United States and the members of the League as to what constituted an aggressor and how to deal with him, on the lines suggested, *e.g.*, by Senator Capper or the Shotwell group in the United States.[2]

Either Schücking and Wehberg's or Oppenheim's view would appear compatible with the Covenant, but which is chosen as the basis for policy is important for the way in which the League will develop. The author believes in acting on the former view, for reasons which can only be indicated in this chapter, but are set forth in Volume II.

(1) The practical consequences of the difference between League coercion of an aggressor and war may become extremely important.[3] Here it must suffice to point to the fact that on the one hand there is an obvious convenience, particularly for jurists,

[1] *Ibid.*, pp. 133-134.

[2] See above, pp. 352-353, footnote, and also Volumes II. and III. The subject is discussed in *The League, The Protocol, and The Empire*, by Roth Williams, pp. 120-122.

Precisely the view that has just been described is expressed by Professor S. de Madariaga of Oxford University, who from 1923 to 1928 was Director of the Disarmament Section in the Secretariat of the League of Nations:

"The Covenant embodied so rapid a progress in international law that its concepts outstrip its vocabulary, and the very merits of its substance render its form inadequate. An international action undertaken in the service of the world community should not be considered as war. The term 'war' should be restricted to correspond in international relations to what a duel or a free fight is in inter-individual relations—*i.e.* a private affair undertaken independently of the community. To extend the term 'war' indiscriminately to private wars of this kind and to international actions undertaken in the service of the world community is tantamount to refusing to see a difference between a duel on the one hand, and a fight between a policeman and a murderer on the other. The matter deserves to be studied in itself, since it is—to say the least—doubtful whether a Covenant-breaking state can be granted belligerent rights. This is one of the points on which a friendly discussion with the United States might bring about far-reaching results" (From an article by Professor Madariaga in *The Times* of April 28, 1928).

Such a view coming from such a source makes it at least probable that it is that held by those most closely and authoritatively concerned with the new international law being slowly worked out by the joint labours of the civilized nations at Geneva.

[3] See Volume II.

in "knowing where you are"—that is, in having the clearly marked status and rules of a state of war to contemplate when considering the question of League sanctions,[1] instead of having to work out new legal relationships and all their practical implications, and on the other hand there is the fact that the dominant tendency within the League has been to develop "sanctions" along economic and pacific lines so as to get as far away as possible from warfare and emphasize the analogies with intervention and pacific blockade. The Covenant is clear about the legal obligation but reduces its application to the minimum of ensuring delay and discussion before resort to war, and preventing resort to war to upset a duly rendered and accepted League award. The obligation comes into play only to coerce a state that has actually *gone to war*, and is directed to restoring peace, not to enforcing a decision. Moreover, while entrusting the Council with advisory powers, Article XVI. leaves members of the League free to appreciate whether the *casus fœderis* has arisen, and if so how they are to carry out their obligations. The discussions on Article XVI. have tended to emphasize these points and the tendency to make the application of sanctions as elastic as is compatible with effectiveness, and as different from a state of war as is feasible.

(2) The legal difference between the putting down of crime by the community acting on the basis of legal obligations and through its regularly constituted organs, the Council and Assembly, from war between two states which, according to international law, are equally justified since war is legitimate however it originated and for whatever end it is fought, is surely clear and important. Its psychological and thereby moral and practical consequences are also important, for moral is a prime factor in modern war, and the feelings of the population of a belligerent country which knew that it was regarded as a criminal being coerced by the forces of law and order of the world society to which it belonged, on the basis of obligations to which it had also subscribed, may be a powerful factor in inducing a recalcitrant government to come to terms as quickly as possible. And since its opponents (except for the victim of aggression and possibly one or two of the latter's neighbours) would not be in a state of war with the aggressor, even on a pre-war reading of international law, it would be much easier to restore peace.

[1] It was this consideration which induced the framers of the famous Geneva Protocol to make sanctions legally equivalent to the waging of war. See Volume II.

It may therefore be questioned whether, instead of considering revision of the laws of war, jurists would not be better employed in working out *ab initio* the whole question of what should be the jural relationship between the League on the one hand and a Covenant-breaker on the other, basing themselves on the fundamental postulate that the Covenant-breaker was an international criminal, outlawed and being restored to order by the joint efforts of the society of nations, but that this process could not be twisted into an excuse for depriving the offending state of its political independence or territorial integrity and should aim at the maximum " preventive " and " moral " effect and the minimum of physical coercion.

CONCLUSION

To sum up, the League has introduced new factors into international law, promoted its growth, tended to derive it more and more from something like a world polity instead of resting on that paradoxical basis sovereignty, and revealed possibilities that the policy of governments and the pressure of public opinion may turn into realities.

The system of international law has its origin in the state system and theory of sovereignty evolved in the sixteenth and seventeenth centuries. It is therefore a very recent growth,[1] and some of its fundamental doctrines have never been more than legal fictions which if acted upon at all have merely brought disaster or justified iniquity. Here, too, the fearful shock of the world war has set men's minds running on new paths, with wider aims and a set resolve to realize the unity of mankind. To do this we must see the world steadily and see it whole: have done with the tyranny of phrases and abstractions such as " sovereignty," " the will of the state," and with the folly of attempting to reconcile civil war in the world community with the laws by which that community is supposed to be governed.

In the last three hundred years—the full span of life of

[1] See above, p. 268.

Cf. also Professor Brierly, in the *British Yearbook of International Law for 1926*, p. 19: " States are not logical constructions, but the products of an historical process, of which we can trace the main outlines; and, like all historical conceptions, the conception of a state is always changing. We can, for instance, trace the very process by which the so-called fundamental rights of independence and equality came to be regarded as qualities of states; we know that not only these ideas, but the very facts in international relations out of which they spring, are modern, that mediæval states were not independent, and that they were not equal to one another either in theory or fact. There can hardly, therefore, be anything fundamental—that is to say, anything that is inherent in the very nature of a state as such—in qualities that actually did not belong to states until comparatively recent times."

international law—the body of human knowledge, and with it our material environment, and the superstructure of social and political ideas and organization have changed more than in all previous history. That change has hitherto primarily affected society as organized within states. But our material environment has long burst all political barriers, and laid a world-wide basis for society. With this has dawned the vast problem, forced into the consciousness of mankind by the tragedy of the world war, of adjusting social, political and legal organization to the new world-wide material basis. The next fifty years will see increases in human knowledge and our command over the forces of nature far outstripping the previous three hundred. Who then is bold enough to set limits to what not only can but must be accomplished in the field of international law as the basis for world polity?

It is against this background of a new order growing out of the world laid in ruins by the war, an order growing at first slowly and in haphazard fashion, later being built ever more swiftly and consciously under the impulse of a gathering world-wide purpose, that we must consider the new institution set up by the League known as the Permanent Court of International Justice.

CHAPTER X

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

ARTICLE XIV. was inserted in the Covenant at the instance of the neutrals, and of those who wished to carry further the work begun by The Hague Conferences, and looked upon the "political" point of view of the Allies after the war as going too far and tending to neglect essential elements in the building of a world polity.[1] The purpose of Article XIV. was to have the League succeed where The Hague Conferences failed and set up a real court of justice for the strictly judicial treatment of disputes. In other words, the Permanent Court was thought of as a direct descendant of the proposed "Court of Arbitral Justice" of the Second Hague Conference, which in spite of its ambiguous name was conceived of as a real court and not an arbitral tribunal.

CONSTITUTION

Article XIV. says that

"the Council shall formulate, and submit to the members of the League for adoption, plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

THE JURISTS' COMMITTEE AND THE COUNCIL

One of the first acts of the Council was accordingly (at its second session, held in February 1920) to appoint a Committee of Jurists to frame a statute for the proposed Court. The Committee met at The Hague the same summer, and in six weeks elaborated a statute and an explanatory report which were submitted to the Council. The Jurists' Committee used as the material for their deliberations the proceedings of The Hague Conferences and various schemes submitted by governments to the Peace Conference.[2] The Committee's report was carefully

[1] See above, pp. 90-91, 160.

[2] *Cf.*, however, Dr James Brown Scott, *The Judicial Settlement of International Disputes*, pp. 64-65, on the drafting of the Statute by the Committee of Jurists:

"What was the condition of things at their opening session? A draft project of the Second Peace Conference, the so-called draft Convention of the Court of

considered by the Council, which made several drafting changes and one important change of substance—namely, the striking out of the proposal to give the Court compulsory jurisdiction, *i.e.* to give either party to a dispute of a legal nature the right to summon the other before the Court—and substituted the necessity for agreement between the parties before a dispute was submitted. The Council argued that this step was necessary in view of the provision in Article XII. of the Covenant that

" the members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or to inquiry by the Council. . . ."

Giving the Court compulsory jurisdiction amounted, said the Council at Lord Balfour's initiative,[1] to amending this article, and it was too early as yet to amend the Covenant. The Jurists' Committee on the other hand had pleaded for the granting of compulsory jurisdiction on the ground that most of the nations of the world had recognized as far back as The Hague Conference

Arbitral Justice; the additional Convention of France, Germany, Great Britain, and the United States to put the Court into effect; a project for a Court of Nine Powers, to be opened on equal terms to all the nations of the world, and the articles of the Pacific Settlement Convention relating to arbitral procedure. The only thing of importance lacking was the method of appointing the judges; but a Court without judges is very like an empty throne in a deserted palace. Under these conditions the Committee might have proceeded at once to methods of selecting the judges, taking the provisions of the three documents as the basis of discussion for the other parts of the Court's anatomy. The proposal to do so was made, only to be rejected, inasmuch as international as well as national bodies apparently like to brush aside the labours of their predecessors in order that they may seem to be ancestors in their own behalf. The result, however, was in the end as if they had started where the three documents left off—as even a casual reading of the completed plan would seem to suggest without a word of comment or discussion—and had inserted in its proper place the method of selecting the judges, thus constituting the old Court of Arbitral Justice with sundry modifications and additions to bring it up to date. I say ' in the end,' for the innovations, thought possible by the Advisory Committee because of the newer spirit engendered by the war, were either silently dropped in the Council or openly repudiated by the Assembly, for the old world always goes back to its old ways after the emotions of war have subsided."

In Dr Scott's account, it will be perceived, the Court proceeds directly from The Hague Conferences and other pre-war events, and the world war and the League are treated as irrelevant and disturbing incidents barely worth mentioning. Dr Scott's account is perhaps overdrawn in this respect, for reasons that are touched upon below (p. 409), but certainly brings out strikingly the element of historic continuity. And Dr Scott was himself present at the Committee.

[1] Lord Balfour's note communicating the views of the Cabinet to the Council in 1920 remarked that " Evidently the framers of the articles [XII. to XIV. of the Covenant] never intended that one party to the dispute should compel another party to go before the tribunal, and this omission cannot have been a matter of choice since the subject of compulsory arbitration has been before the legal authorities of the whole world now for many years. It has more than once been brought up for practical decision, and has always been rejected."

It is beautiful to note with what philosophic detachment this argument links up the past with the present, and ignores the comment provided by the events of 1914-1918 on the " practicability " of the pre-war refusal to arbitrate.

of 1907 that legal questions should be " submitted to compulsory arbitration without any restriction."[1] The report of the Council is an implicit recognition of the strength of this argument :

" The Council does not in any way wish to declare itself opposed to the actual idea of the compulsory jurisdiction of the Court in questions of a judicial nature. This is a development of the authority of the Court of Justice which may be extremely useful in effecting the general settlement of disputes between nations, and the Council would certainly have no objection to the consideration of the problem at some future date." [2]

THE ASSEMBLY

The draft statute as amended by the Council with the covering report was circulated to all the governments members of the League some months before the meeting of the first Assembly, which was summoned at Geneva on November 15, 1920. The Assembly entrusted the examination of the report to its first committee, which in turn set up a sub-committee of ten members (half of them jurists who took part in The Hague meeting that drafted the original Statute), and went over the ground most carefully and thoroughly, both from the point of view of making the text clear and unequivocal and taking into account all possible practical difficulties, questions of procedure, etc., and as regarded the big question of principle whether the Court should or should not have compulsory jurisdiction.

(a) *The " Optional-Compulsory " Clause*

The Great Powers still opposed compulsory jurisdiction, both on the technical ground that it would involve an amendment of the Covenant and on the general ground that it was " premature." They added Platonic tributes to the desirability of compulsory jurisdiction and equally Platonic regrets at their inability to accept it at present, and expressed a large and vague expectation that the growth of the world's confidence in the Court, based on experience of its work and usefulness, would eventually bring about the consummation they all so ardently desired. The smaller Powers, however, succeeded at the last moment in introducing a provision by which states wishing to accept the compulsory jurisdiction of the Court could do so by signing a so-called optional clause in the Protocol of Signature to the Statute of the Court.[3]

[1] See above, p. 292, and Professor P. J. Baker, *British Yearbook of International Law*, 1925, on " The Jurisdiction of the Permanent Court."

[2] League of Nations document, A. 44, 1920, p. 87.

[3] See below, pp. 386-388. Birkenhead, *op. cit.*, p. 177, erroneously suggests that it was the Council, not the Assembly, that inserted the " optional-compulsory " clause.

(b) *Method of adopting the Statute*

A further question of principle exhaustively debated at the Assembly was whether the Statute should be adopted by a mere vote of the Assembly or referred to the governments for signature and ratification. On the one hand it was argued that the Assembly —being composed of delegates who had been sent by governments that had all had ample opportunity to consider the question of the Court in all its aspects, and which had sent their delegates to deal with this matter as one of the points on the agenda of the Assembly—was competent to adopt the Statute without further ado. It would be a dangerous precedent to suggest that the Assembly did not possess the power to take this course. On the other hand it was urged that an instrument of such importance must be subject to the ordinary procedure of signature and ratification. Finally, there was a compromise by which it was decided that the Statute must be signed and ratified, but that this was done in virtue of the sentence in Article XIV. saying that the Council should "submit to the members of the League for adoption" its plans for the establishment of the Court, and should therefore be considered as a special case that did not constitute a precedent, and would not prejudice the future procedure of the Assembly.[1]

THE LEAGUE'S ACHIEVEMENT

Thus at the end of its first year the League of Nations had succeeded where two Conferences separated by eight years of effort (1899-1907) before the war had failed, and had adopted the constitution of a Permanent Court of International Justice. This document was

> "no haphazard or ill-digested experiment. Some of the ablest legal minds existing at the present time, drawn from all parts of the world, dedicated their energies to the elaboration of its constitution. Their work was submitted to the criticism of the leading statesmen of the day, and again reconsidered and amended by the representatives of a large majority of civilized countries." [2]

By the second meeting of the Assembly in September 1921 the Statute had been ratified by a sufficient number of states to bring it into force, and the necessary steps had been taken to enable the Assembly and Council to proceed to the election of judges. This was accordingly done, and the judges elected. The Court held its inaugural meeting on January 30, 1922, and its first regular session on June 16 of that year. It has since then held

[1] See below, p. 469.
[2] A. Fachiri, *The Permanent Court of International Justice*, p. 20.

regular sessions at that date every year, often lasting over some months,[1] and has also met in extraordinary session several times. During its first five years of existence—that is, from the beginning of the June session 1922 to the end of the June session of 1927—the Court delivered eleven judgments and fourteen advisory opinions, and began 1928 with a full docket. Its record will be discussed in the appropriate chapters of Volume II. Here we are concerned with its constitution and working, and will take these subjects in the order in which they occur in the report of the Jurists' Committee and the Statute of the Court—namely, organization, jurisdiction and procedure.

ORGANIZATION

Number of Judges and Deputy Judges

According to the Statute, the Permanent Court is to be composed of eleven judges and four deputy judges. The Assembly at the proposal of the Council has the right to increase this number to a total of fifteen judges and six deputy judges.

Qualifications for Election

(a) *Legal Qualifications*

To be eligible for the position of judge, candidates must be

> " persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial offices or jurisconsults of recognized competence in international law."

This means that only lawyers can be elected, and distinguishes the judges of the Court from the members of The Hague panel of arbiters, who are required to be simply of high moral character and of " recognized competence in questions of international law." This vaguer qualification allows, and in fact has allowed, of politicians and diplomats being included in The Hague list of arbiters.

Whereas in England judges are required in the highest courts to consider questions of international law, and are chosen from among the heads of the legal profession, the same is not always true in Continental or Latin American countries, where professors of international law at universities, or private so-called " jurisconsults," may be the greatest authorities on international law. The qualifications for judges of the Court are framed so as to allow for this diversity.

[1] In 1927 six months, followed by an extraordinary session in January 1928.

(b) *Independence and Impartiality*

The judges " may not exercise any political or administrative function " (Article 16). This has been so interpreted in the various reports of the Jurists' Committee, Council and Assembly as to make it clear that what is intended is to make a judgeship incompatible with the position of being a member, representative or officer of any government, but not to exclude membership in a legislature, and particularly membership in the British House of Lords, which of course is apt to include all the highest legal authorities in England. The rule does not however apply to deputy judges, except when performing their duties on the Court. Any doubt on this point is settled by the decision of the Court. It is further stipulated that " no member of the Court can act as agent, counsel or advocate in any case of an international nature (Article 17). This provision again applies to deputy judges only as regards cases where they are required to exercise their functions on the Court :

" No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties or as a member of a national or international court, or of a commission of inquiry or in any other capacity. Any doubt on this point is settled by the decision of the Court (Article 17)."

If for some special reason a judge considers that he should not take part in a special case he shall so inform the President. The President may also give a member of the Court notice to this effect, and in case of disagreement the Court decides (Article 24).

By Article 20 of the Statute every member of the Court is required before taking up his duties to " make a solemn declaration in open court that he will exercise his powers impartially and conscientiously." In pursuance of this article the rules of the Court require members of the Court or judges summoned to complete the Court to swear as follows :

" I solemnly declare that I will exercise all my powers and duties as a judge, honourably and faithfully, impartially and conscientiously,"

at a public sitting of the Court convened specially for the purpose if necessary. It is an interesting fact that the original form of the oath proposed included a reference to the League of Nations as the organized society of states that had established the Court. This was struck out at the instance of the American judge who feared the political effect in the United States. It may be regretted that the original form was not maintained in order to emphasize

the indissoluble connexion between a real Court and the existence of an organized interstate society, as compared with the fictitious community of nations before the war.[1] In addition to taking the oath the judges of the Court wear special robes and have worked out a procedure, simple to the point of austerity, but grave and impressive, for the conduct of their deliberations.

METHOD OF ELECTION AND NOMINATING CANDIDATES

(a) *The Compromise between Great and Small Powers*

The rock on which pre-war attempts to set up a Court split was, as has been mentioned above,[2] the desire of the great states to have permanent representation conflicting with the desire of the smaller to complete equality. The necessity for a compromise between great and small states is invariably met with in any attempt at interstate organization, and was solved in the League, as has been shown above,[3] by the constitution of the Assembly and Council. Once the compromise had been made, and an organized society of states established, all that was necessary was to apply it to the particular case in hand. The application was made, curiously enough, by Mr Elihu Root, former Secretary of State of the United States, the distinguished American member of the Jurists' Committee, who further took the occasion to refer to the existence of the same problem in the constitution of the United States and its solution by the different bases of representation in the Senate and the House of Representatives.

(b) *Nomination of Candidates*

Accordingly the Statute provides that judges of the Court are to be elected by absolute majorities in both the Council and Assembly sitting independently of each other.[4] The elections are made on the basis of a panel of candidates chosen according to elaborate rules intended to secure the object of the Statute in composing the Court of "a body of independent judges elected regardless of their nationality" (Article 2). It is provided that the national groups in The Hague Court of Arbitration—that is, the panel of arbiters appointed by the different signatories to The Hague Arbitral Convention—should nominate the candidates for election. In the case of Powers not party to the Convention, nominations are made by groups composed in the same way. In

[1] See below, pp. 427-431. [2] See pp. 291-292. [3] See p. 127.

[4] At the time the Statute was framed the Great Powers were expected normally to outnumber the small on the Council. To-day the proportion is five to nine, so that theoretically the small could outvote the great just as easily on the Council as on the Assembly. In fact, of course, the influence of the Great Powers in the League is so strong that they have no need to fear that their legitimate interests will be slighted either on the Assembly or Council.

other words, the nominations are made by groups of four persons of " high moral character and recognized competence in questions of international law," members of The Hague panel of arbiters. Each of these groups can submit up to four names, of which only two shall be of its own nationality, and is recommended in doing so to " consult its Highest Court of Justice, its legal faculties and schools of law and its national academies and sections of international academies devoted to the study of law " (Article 6). In practice the tendency has been for a few distinguished names to appear in the nominations of a large number of groups, so that the list of candidates submitted to the First Assembly was only sixty instead of a possible maximum of one hundred and sixty.

(c) *Powers entitled to nominate Candidates*

The Powers entitled to nominate candidates in this way are the members of the League or the states mentioned in the Annex to the Covenant (Article 5). The latter provision was included by the Jurists' Committee, on Mr Root's suggestion, to smooth the path for the United States. At the time of the first election of judges (1921) the United States group was accordingly asked to nominate candidates, but refused. At the " bye-election " in 1923 the U.S. Hague group did, however, nominate candidates—after declaring in 1921 (under pressure from the State Department) that they were constitutionally incapable of so doing !

(d) *Electoral Procedure*

By Article 10 :

> " In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected."

To go by the text, this restriction applies only to the members of the League, so that if two nationals of the United States, Ecuador or Hedjaz (states mentioned in the Annex to the Covenant but not members of the League), were elected they would both become members of the Court. In fact of course all this provision shows is that the framers of the Statute never contemplated the adhesion of states not members of the League, in spite of Mr Root's afterthought. The clause must be construed as meaning " more than one candidate of the same nationality." In case the requisite number of candidates fail to obtain absolute majorities in both the Assembly and Council, sitting separately, either body has the right, after the third ballot, to request a joint conference composed of three members each of the Council and Assembly. This conference then tries to find a common candidate who is

chosen either by a majority vote from the names on the lists of candidates or unanimously from suitable persons not on the list. The Council and Assembly are then required to vote on the names submitted. If they fail to vote by majorities of all the votes cast in each body for this candidate the members of the Court have themselves the right to co-opt the remaining members of the Court. In case there is a tie in voting among the judges, the eldest has a casting vote.

REPRESENTATIVE CHARACTER OF BENCH

In addition to their personal qualifications it is stipulated (Article 9) that the whole body of judges should " represent the main forms of civilization and the principal legal systems of the world." The report of the Jurists' Committee points out that while the Court must be a single court functioning on the basis of a unified and world-wide international law it is desirable that its members should represent the various national systems of legal education and attitude as well as the different civilizations, so that the Bench will be familiar with not only all the points of law before it, but the national customs, institutions and traditions that may be part of the " imponderabilia " of the case before them.

TERM OF OFFICE AND IRREMOVABILITY OF JUDGES

Judges hold office for nine years, and are irremovable except by unanimous vote of their fellow-judges. The idea of a life appointment was considered, and rejected since the difficulty of getting rid of magistrates and judges who refuse to resign while becoming too old to perform their functions usefully is a disadvantage too well known in national law courts to be ignored in establishing an international court. It is also felt that the desire for representation should be taken account of, and that a general election of judges for nine years would meet both requirements. The irremovability of a judge except by the unanimous desire of his fellow-judges means that only cases of failing health or mental powers, or some extraordinary circumstance of this sort, would enable a judge to be removed, and that in particular political pressure is excluded.[1]

SALARIES AND ALLOWANCES

Judges are granted a salary or retaining fee of 15,000 Dutch florins (about £1250) per year, with a duty allowance of 100 florins (about £8) per day from the time of leaving their home country on the business of the Court to the date of their return. The Vice-

[1] See below, p. 376. Judge A. de Bustamante, *The World Court*, § 128, discusses the advantages and disadvantages of life tenure.

President's daily duty allowance is 150 florins (about £12, 10s.) and the deputy judges, who do not draw any salary, also receive a duty allowance of 150 florins a day. In addition there is an allowance of 50 florins a day granted to the Vice-President, judges and deputy judges during the time of their presence at The Hague. The President of the Court is required to reside at The Hague, and therefore has a special annual allowance of 45,000 florins (about £3750). Travelling expenses are granted to all judges and deputy judges in the performance of their duties, and all salaries and allowances are free of income tax. The members of the Court are therefore put in a financial position that makes them wholly independent of any other employment, and assures their giving their undivided attention to the business of the Court.

DIPLOMATIC IMMUNITIES

By Article 19 of the Statute "the members of the Court when engaged on the business of the Court shall enjoy diplomatic privileges and immunities." [1]

THE PARTICIPATION OF NATIONAL JUDGES

The question of whether judges of the nationality of the parties in a dispute should be allowed to sit on a Court was debated at great length during the constitution of the Court. It was suggested either that since the judges were elected regardless of nationality the composition of the Court should remain unaffected whether the parties represented on it were of the same nationality or not, or that the judge or judges belonging to the nationality of the party or parties should retire from the case, or that a national assessor should be appointed in each case with advisory powers but no vote, or lastly that a national judge should be appointed *ad hoc* to sit where the party would otherwise be unrepresented on the Bench.

It was decided that without sacrificing the judicial value of its decisions the psychological and moral authority of the Court would be increased by always assuring the presence of a judge of the nationality of the party; such a judge, whether he agreed or not with the Court's decision, could help his colleagues to frame it in such a way and add such explanations as would give it the best chance of being as little disagreeable as possible to the public opinion of the country against whom the decision was taken, and if, as has already happened on the Court,[2] a judge of the nationality of the

[1] There have been controversies with the Dutch Government on the position of the judges *vis-à-vis* the diplomatic corps.

[2] In the advisory opinion on the dispute between Great Britain and France over a nationality question in Tunis and Morocco, when Judge Weiss, the French Vice-President, agreed with its opinion, although that opinion was adverse to the view of the French Government.

party against whom a decision is taken agrees in that decision its moral authority is greatly increased.

By Article 31 of the Statute it was therefore decided that where judges of the nationality of the contesting parties were already on the Court they should retain their right to sit, that where such a judge was not present he should be selected from the deputy judges, and if there were no judge or judges of the required nationality or nationalities among the deputy judges a judge should be selected by each party, preferably from among the candidates nominated for election to the Court. Several parties in the same interest should be reckoned as one party when it came to selecting judges. Presumably, if there were more than one party representing different interests (as in the case of states intervening because of a legal interest in the question at issue although not siding with either party) they should also have the right to appoint judges. Such *ad hoc* national judges must possess the qualifications required by the Statute for members of the Court and take part in the decision on an equal footing with their colleagues.

In September 1927 the Court decided that these provisions should apply to a question referred for an advisory opinion "relating to an existing dispute between two or more States or members of the League of Nations. . . . In case of doubt the Court shall decide" (Amendment to Article 71, Rules of Court).[1]

THE FULL COURT AND SPECIAL CHAMBERS

The Jurists' Committee proposed that the Court should sit in divisions, but this was rejected in favour of the stipulation that the full Court alone should be competent to hear cases and that a quorum of nine members out of the eleven judges and four deputy judges should be required. This decision was obviously valuable from the point of view of ensuring continuity and unity in the decisions of the Court.

The Statute however provides for the formation of special Chambers, consisting of five members and two deputies appointed by the Court from among its members for periods of three years, to hear cases arising out of the Constitution of the Labour Organization [2] or from transit and communications questions, particularly such as may be due to the ports, waterways and railways sections of the peace treaties, in which compulsory jurisdiction is conferred upon the Court. A panel consisting of an equal number of employers

[1] See below, pp. 390-391.
[2] See above, p. 229.

and labour representatives is appointed in the way described above,[1] and four assessors chosen for each labour case by the special Chamber or the full Court. A similar panel of expert assessors is selected in the way described in Volume II. for transit and communications cases, but it depends on the will of the parties or the decision of the Court whether the assessors are chosen from this list for any particular case. The assessors take part in the deliberations of the Court, but cannot vote in its decisions. The reason the distinction is made between labour matters and transit and communications questions is that the latter are considered to be not always and necessarily of a technical character, nor involving the domestic and social elements present in labour cases. Hence the presence of transit assessors is optional, that of labour assessors obligatory.

Lastly, the Statute enables contesting parties to request the formation of a Chamber of Summary Procedure, composed of three members and two substitutes elected annually by the full Court by absolute majority, when it is desired to dispatch the case speedily.

MEMBERS OF THE COURT

The elections to the Court were held in September 1921, and the nine years' term of office of these members therefore expires in 1930. Members are re-eligible. There was a "bye-election" held in September 1923 to fill the place fallen vacant on the death of Judge Barboza. It should be noted that the term of office of a judge so elected comes to an end at the same time as that of his colleagues —that is, he is not elected for the full nine years, but only for the period remaining of the term of office of the judge he replaces. This was a point argued at some length when the Court was constituted. On the one side it was urged that if there were overlapping terms there would always be a measure of continuity in the functioning of the Court, whereas a complete renewal every nine years might involve a too sudden change. To this it was replied that re-eligibility enabled the question of continuity to be considered, while on the contrary the overlapping of terms in the way suggested might end in the Assembly having to proceed to the election of one or two judges every two or three years, without ever having a chance to consider the position of the Court as a whole in order to take account of the desirability of equitable redistribution of seats and a fair balance of the different systems of law and civilization.

[1] P. 229.

The members of the Court since 1923 are :

List of Judges in order of Precedence :

M. Anzilotti, President, 1928-1931 (Italian).
M. Huber, Former President, 1925-1928 (Swiss).
M. Weiss, Vice-President (French).
Lord Finlay (British).
M. Loder, First President, 1922-1925 (Dutch).
M. Nyholm (Danish).
M. Moore (American).[1]
M. de Bustamante (Cuban).
M. Altamira (Spanish).
M. Oda (Japanese).
M. Pessoa (Brazilian, elected in 1923 for seven years in place of M. Barboza, deceased, also Brazilian).

Deputy Judges :

M. Yovanovitch (Yugoslav).
M. Beichmann (Norwegian).
M. Negulesco (Roumanian).
M. Wang Chung-Hui (Chinese).

States adhering to the Statute

The Statute of the Court has been signed by fifty-two states—that is, by all the members of the League (and by two ex-members—Brazil and Costa Rica) except the Argentine Republic, Honduras, Nicaragua and Peru. Of the states signing the Statute all have ratified except Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Guatemala, Liberia, Luxemburg, Panama, Paraguay, Persia and Salvador.[2]

States adhering to the Optional Clause

The optional clause for compulsory jurisdiction of the Court has been signed by twenty-seven states and ratified or adhered to without ratification by sixteen. The states between which the optional clause is already in force are Abyssinia, Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, Germany, Greece, Haiti, Lithuania, the Netherlands, Norway, Portugal, Sweden, Switzerland and Uruguay. Some of these states ratified, or signed not subject to ratification, without any time-limit, others adhered for five years and have since renewed for ten years. Belgium adhered in 1926 for fifteen years.

[1] Resigned in April 1928, thus making the election of another (American) judge at the Ninth Assembly (September 1928) necessary. Sooner or later the Court is bound also to have a German judge, in view of the eminence of German jurists in international law, and to increase its members in order to cope with its growing volume of work.

[2] Note the high proportion of Latin American countries among those not signing or not ratifying. See remarks in this connexion in the chapter on " The Development of International Law " in Volume II., as well as in that on " Latin America " in Volume III.

China adhered in 1922 for five years, but as this has not been renewed it expired on May 13, 1927.[1] Brazil ratified on December 1, 1921, for five years, her ratification taking effect on compulsory jurisdiction being accepted by at least two of the Powers permanently represented on the Council of the League of Nations. The question now arises whether this conditional ratification is to come into force at any future date upon acceptance of the optional clause by two permanent members of the Council, or whether the conditional offer is to be considered as having been made for five years from the date of ratification (1921), and so, as it was not accepted during that period, as now having expired. At any rate the Brazilian Government is the only authority competent to decide between these interpretations, and it may be assumed that the action taken by that government will depend upon its general attitude to the League—if Brazil reassumes active membership, and the optional clause is accepted by the Great Powers, Brazil's acceptance is almost certain, if not, not. The states that have signed the optional clause subject to ratification are Costa Rica, the Dominican Republic, France, Guatemala, Latvia, Liberia, Luxemburg, Panama and Salvador.[2]

JURISDICTION

Parties before the Court

States and states only can be parties before the Court. The term "State"[3] includes members of the League whether or not the latter are states in international law (*e.g.* the Dominions and the Irish Free State) or even states proper[4] (India) in the meaning given this term by Westlake.[5] This limitation is of course without prejudice to the possibility of a government taking up the case of an individual or corporation either by agreement with the other party (presumably based on recognition of the first party's right in international law to appear on behalf of the said person or corporation) or under a treaty conferring compulsory jurisdiction—*e.g.* the minorities treaties give a member of the

[1] Practically simultaneously with the summoning of China before the Court under the optional clause. See Volume II.

[2] See below, pp. 387-388.

[3] Birkenhead, *ibid.*, p. 175, says: "Only States Members of the League of Nations can be parties before the Court." This must be a misprint for "Only States *or* Members of the League of Nations can be parties before the Court," which is the wording of the Statute.

[4] A. Fachiri, *ibid.*, p. 55, suggests that communities under so-called A mandate are qualified to appear as parties before the Court.

[5] See above, p. 283.

Council the right to summon a state before the Court on minorities questions; the member of the Council may, therefore be representing the interest of a minority group.

ACCESS TO THE COURT

By Article 35 of the Statute "the Court shall be open to the members of the League and also to states mentioned in the Annex to the Covenant." It would appear reasonable to read this in conjunction with the clause in the Protocol of Signature stating that "the said Protocol shall remain open for signature by the members of the League of Nations and by the States mentioned in the Annex to the Covenant of the League," and Paragraph 3 of the Assembly resolution of December 13, 1920, concerning the establishment of the Court, which declares that:

> "As soon as this protocol has been ratified by the majority of the members of the League the Statute of the Court shall come into force and the Court shall be called upon to sit in conformity with the said Statute in all disputes between Members or States which have ratified as well as between the other States, to which the Court is open under Article 35, Paragraph 2, of the said Statute."

Article 36, by making clear that the question of choosing between "voluntary" or compulsory jurisdiction of the Court arises only from the moment of signing or ratifying the Protocol of Signature, would appear also to imply the conclusion that ratification of the Protocol must precede access to the Court. This view has been occasionally maintained.[1] On the other hand Article 5 empowers "members of the League and States mentioned in the Annex to the Covenant" to take part in the nomination of candidates whether they are parties to the Statute or not, and members of the League in addition pay the Court's budget and elect the judges. By Article XIII. of the Covenant all the members of the League undertake to submit disputes to the Court under certain circumstances, and by Article XIV. the Assembly and Council ask the Court for advisory opinions.

(a) *For States mentioned in the Annex to the Covenant*

It would therefore seem a reasonable conclusion to state that states mentioned in the Annex to the Covenant but not members of the League can participate in the nomination of candidates for election to the Court, and can appear before the Court without further ado and without any need to sign any

[1] For instance by A. P. Fachiri, *British Yearbook of International Law*, 1926, p. 250. There seems no doubt that this was the intention of the Assembly in framing the Statute, but the contrary interpretation has since prevailed, largely with an eye to America.

document or make any declaration, although with the obligation to pay their share of the expenses of the Court (Article 35).

(b) *For Members of the League*

The relation of members of the League to the Court is indistinguishable from that of signatories of the Statute (the latter in fact, with the single exception of states mentioned in the Annex to the Covenant, is open only to members of the League). Members of the League as such, and without being parties to the Statute, participate in the nomination of candidates and in the election of judges, and pay the budget of the Court, as well as possessing the right to appear before it.

The Statute is therefore important because it fixes the constitution of the Court and its relation to the League, but access to the Protocol of Signature once the Statute has come into force is well-nigh a superfluity, and for members of the League a meaningless formality.[1]

(c) *For Non-Member States not mentioned in the Annex*

There remains the case of states which are neither members of the League nor mentioned in the Annex to the Covenant. By Article 35 of the Statute the Court shall be open to such states on conditions laid down by the Council, subject to the special provisions contained in treaties in force (*e.g.* the Peace Treaties, which confer compulsory jurisdiction on the Court for certain questions, and thus for instance bound Germany to compulsory jurisdiction on these matters even though she was not a member of the League nor mentioned in the Annex to the Covenant). It adds that " in no case shall such provisions place the parties in a position of inequality before the Court." The Council was therefore charged with the duty of laying down the conditions on which such states should have access to the Court. It could discharge this duty either by taking an *ad hoc* decision for each case if and when it arose, or by laying down a general rule in advance. The Council chose the latter course, and on May 17, 1922, decided that the Court should be open to any state which

" shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court in accordance with the Covenant of the League of Nations, on the terms and subject to the conditions of the Statute and rules of procedure of the Court, and undertakes to carry out in full good faith the decision or decisions of the Court, and not to resort to war against a State complying therewith."

[1] See below, pp. 420-426.

In other words, a state in order to have access to the Court must promise to carry out its award and not to resort to war against a state complying therewith, exactly as the members of the League have undertaken to do by adhering to the Covenant.

The Council further stipulated that a state might make a declaration of this sort with respect to a particular dispute or disputes that had already arisen, or a general declaration accepting the Court's jurisdiction for all disputes or for a particular class or classes of disputes that had arisen or might arise in the future. It added that in making such a general declaration a state might accept the compulsory jurisdiction of the Court under the optional clause, but that in so doing it could not without special convention rely upon this compulsory jurisdiction *vis-à-vis* members of the League or states mentioned in the Annex to the Covenant which had signed or might subsequently sign the optional clause. Thus the Court is open on equal terms to all states that accept its jurisdiction, although by the terms of the Statute only States Members of the League or mentioned in the Annex to the Covenant can sign the Statute or nominate candidates, and only members of the League can elect judges.[1]

"LEGAL" AND "POLITICAL" QUESTIONS

Broadly speaking, judicial procedure applies to conflicts arising out of disputed points of fact or the interpretation of treaty obligations or of custom. Because of the fragmentary and inchoate state of international law and the differences of opinion on what its dictates are on many points there is plainly often occasion for taking into account equity, reason and imponderabilia not of a strictly legal character. But where there is no difference on points of fact or law, but simply the desire of one party to change the existing state of fact or law on grounds of its needs, or the rise of a new situation, or for any other reason, the matter is, as a rule, not one with which legal tribunals can deal.[2] Such questions are analogous to, *e.g.*, the claim of a trade union to increased salaries or shorter hours or a share in the management of the industry in which it is engaged, or to a demand by municipalities or county councils for more self-government. National courts could obviously not deal with such issues, which are a matter for negotiation and compromise, often resulting in

[1] See below, p. 421.

[2] Although see above, pp. 347-349, and Volume II. for a discussion of the possibility of bringing suits for the voidance of treaties before the Court.

legislation. These two classes of questions occur in international conflicts—both indeed are very often present in the same dispute —and must be dealt with by correspondingly different methods. How political conflicts are dealt with through the League is described below [1] and is further discussed in Volume II. Here we are concerned only with the former category, which may be designated as legal questions.

The distinction between legal or justiciable and political or non-justiciable questions was much debated at The Hague Conferences,[2] and the former somewhat vaguely defined as " questions of a legal nature and especially the interpretation and application of treaties," which it was agreed should be subject to compulsory jurisdiction—*i.e.* either party should have the right to summon the other on such issues before an arbitration tribunal. But as we have seen above [3] the identification of " political " or " non-justiciable " matters with questions that a state chooses to consider as affecting its so-called honour or vital interests, made all arbitration depend upon agreement between the parties, and further implied that arbitration was a procedure reserved for matters of small importance.

At the framing of the Covenant the stultifying reservation concerning honour and vital interests was dropped, and an indication given in Article XIII. as to what constituted legal or justiciable questions as follows :

> " Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration." [4]

The word " general " was retained in the text at President Wilson's insistence, and corresponds to the " political " attitude of the framers of the Covenant.[5] Attempts by the Scandinavian Powers to have it taken out by amendments at the First Assembly and Second Assembly were defeated.

The Jurists' Committee proposed that the Court should have compulsory jurisdiction in cases of a legal nature defined as

[1] Pp. 470-473.
[2] *Cf.* above, pp. 292-293, and Woolf, *ibid.*, pp. 50-52.
[3] P. 293.
[4] The amendment " or judicial settlement " was added by the Second Assembly, and came into force in 1924. See below, p. 412.
[5] See above, p. 88, and below, pp. 411-412.

(*a*) the interpretation of a treaty, (*b*) any question of international law, (*c*) the existence of any fact which if established would constitute a breach of an international obligation, (*d*) the nature or extent of the reparation to be made for the breach of an international obligation, and (*e*) the interpretation of a sentence passed by the Court. Either party should have the right to summon the other before the Court on such issues—the Court to decide any case of doubt whether the matter came under these categories —and the Court should hear the case if it were satisfied that diplomatic means had failed, and that no agreement had been made to choose another jurisdiction. The Jurists' Committee's proposal was however defeated by the Great Powers, as we have seen.[1]

" VOLUNTARY " JURISDICTION OF THE COURT

When the jurisdiction of the Court was made merely voluntary by the Great Powers it was defined more broadly as comprising " all cases which the parties refer to it or matters provided for in treaties and conventions in force." [2] This was because states can reduce almost any question to a " justiciable " issue by negotiating contingent agreements on all the " political " elements and leaving in their *compromis* or special agreement only differences on points of law or fact. In this connexion it must be remarked that there are considerable differences of opinion as to what constitutes the distinction between " legal " and " political " questions, and as to whether these categories are to be identified with" justiciable " and " non-justiciable."

(a) *According to Pollock*

On this subject Sir Frederick Pollock remarks, with his usual bluff common sense :

" Mr Fachiri points out that under Article 36 of the Statute the court will in effect regard as justiciable any dispute which the parties treat as such by submitting it to the court. This is good sense, and brushes away some of the cobwebs that have been spun by ingenious but unpractical publicists. I am inclined to agree with some learned American brethren who think there has been altogether too much fuss about the distinction between justiciable and non-justiciable differences. In the absence of a rigid constitution, questions of this kind which look formidable on paper are apt to settle themselves in practice; provided, of course, that the parties mean business, which after all is a fundamental condition of getting things done by consent." [3]

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[1] See above, pp. 366-367.

[2] The Jurists' report had a similar provision, but it was made subsidiary to the compulsory jurisdiction, whereas in the Statute the order is inverted.

[3] Pp. 135-136 of the *British Yearbook of International Law for 1926.*

(b) *Oppenheim*

On the other hand, Oppenheim writes [1]:

" State differences are correctly divided into legal and political. Legal differences arise from acts for which States have to bear responsibility, be it acts of their own or of their parliaments, their judicial and administrative officials, their armed forces or individuals living on their territory. Political differences are the result of a conflict of political interests. But although this distinction is certainly theoretically correct and of practical importance, frequently in practice a sharp line cannot be drawn. For in many cases States either hide their political interests behind a claim for an alleged injury, or make a positive, but comparatively insignificant, injury a pretext for the carrying out of political ends. Nations which have been for years facing each other armed to the teeth, waiting for a convenient moment to engage in hostilities, are only too ready to obliterate the boundary line between legal and political differences. Between such nations a condition of continuous friction prevails which makes it difficult, if not impossible, in every case which arises, to distinguish the legal from the political character of the difference.

" It is often maintained that the Law of Nations is concerned with legal differences only, political differences being a matter, not of law, but of politics. Now it is certainly true that only legal differences can be settled by a juristic decision of the underlying juristic question whatever may be the way in which such decision is arrived at. But although political differences cannot be the objects of juristic decision, they can be settled short of war by amicable or compulsive means. And legal differences, although within the scope of juristic decision, can be of such kinds as to prevent the parties from submitting them to juristic decision, without being of such a nature that they cannot be settled peaceably at all."

In other words, not only are political differences incapable of settlement by judicial procedure and distinctions between legal and political questions often hard to draw, but occasionally even legal matters are of such a nature that they require a " political " form of settlement. This was, broadly speaking, the view that inspired the framers of the Covenant.

(c) *The Institute of International Law*

But the Institute of International Law has suggested (in 1922) that all disputes are *prima facie* justiciable, and in cases of doubt an affirmative vote of a three-quarter majority of the Court should settle the question, failure to obtain a three-quarter majority involving reference of the dispute back to the parties.

(d) *The Locarno Treaties*

Sir John Fischer Williams, in a paper on " The Place of Law in International Affairs," [2] draws attention to the importance of the definition of justiciable disputes given in the Locarno treaties, which simply declare that:

[1] *Op. cit.*, pp. 3-5.

[2] Published in the April 1928 number of the *Journal of the Royal Institute of Foreign Affairs*.

"any question with regard to which the parties are in conflict as to their respective rights shall be submitted to judicial decision. . . . All other questions shall be submitted to a conciliation commission."

This definition makes it depend upon the attitude of the parties whether any particular dispute is or is not justiciable, and so the whole difficulty of establishing an objective test is avoided. The other horn of the dilemma—the danger of the Court not finding a law applicable to some of the infinitely varied disputes that might in this way be brought before it—may be avoided by stressing its power to draw on the general principles of law for filling up the gaps in customary or conventional international law. [1]

(e) *Scott*

A similar view is expressed by Dr James Brown Scott, who writes that:

"A court is to assume jurisdiction of and to decide judicial, not political, questions, and unless questions political may become judicial, the Court can only decide controversies of a restricted nature—controversies which, it is said, rarely result in war. The jurisdiction of the Court would be limited and its service limited, and while it would be worth while to constitute it between States, its usefulness would necessarily be restricted. But political questions at a given time may become judicial and the Court opened to the dangerous newcomer. How may this happen? Justice Baldwin informs us, and this is the great value of his opinion—by the simple agreement of the parties to submit the dispute to a court of justice. . . . The mere submission to a court divests the political sovereign of the power to decide and the question becomes judicial although the law be not determined by the submission. The question, having become judicial, is to be decided in the ordinary course by judges supposed to be learned in the principles of justice and capable of stating them in the form of rules of law. . . . Political questions may be made judicial by a series of agreements until the category of political questions be exhausted, or the agreement to submit all questions 'hitherto considered political, may be but' a single act as in the Articles of Confederation or Constitution of the United States." [2]

This opinion is worthy of respect in view of its distinguished source, and is valuable as indicating the way international law may be built up and questions gradually transferred from the "non-legal" to the "legal" domain.[3] But Dr Scott is surely overstating his case when he goes on to assert [4] that all international disputes can be converted into justiciable questions by the conclusion of a "mere judicial union—that is to say, a union

[1] See the views of Lauterpacht, described above, p. 276, and the discussion on the sources of law on which the International Court can draw, below, p. 405.

[2] Pp. 32-36 of *The Judicial Settlement of International Disputes*, a reprint of the lectures delivered to the Geneva Institute of International Relations in August 1926 (also appearing in the first series of the Proceedings of the Institute).

[3] See above, pp. 302-303.

[4] *Ibid.*, p. 31.

for a single purpose" between nations otherwise enjoying sovereignty in the full and pre-war sense. He himself admits in the passage quoted that political questions can be converted into justiciable only through either a series of agreements—and though he does not say so, the agreements must obviously be political, and the conclusion of such a series implies a permanent political bond and methods of settling political disputes between the nations concerned—or by one agreement setting up a full-fledged closely knit permanent political association such as that established by the Articles of Confederation, and further tightened up by the Constitution of the United States. Incidentally it is to be noted that in international law [1] the United States of America is not a federation, nor even a federal state, but an incorporate union, like Great Britain or the German Republic, whose component parts retain the name of states, partly as an historic reminiscence and partly by way of compliment. Yet Dr Scott does not hesitate, in the lectures from which the above passages are quoted, to draw the most sweeping parallels and analogies between the semi-autonomous communities comprising the United States and the relations of sovereign states of international law bound by no political ties. Conclusions drawn from such metaphorical analogies can be accepted only with reserve.[2]

These considerations will show how elastic are the limits of the "voluntary" jurisdiction of the Court. Some treaties—*e.g.* that between Switzerland and Italy—undertake to bring all disputes before the Court that are not settled by conciliation. The only fixed points indeed are the will of the parties and the opinion of the Court (for presumably the Court retains the right to refuse to adjudicate a case if it be not in what it considers a justiciable form. Such a case is, however, not likely to arise, particularly in view of "the power of the Court to decide a case *ex æquo et bono* if the parties agree thereto" [3]).

"Compulsory" Jurisdiction

(a) *Its Nature*

But the elasticity permissible when the parties have to agree each time what case and in what form they are to submit to the

[1] *Cf.* Westlake, *ibid.*, p. 2.

[2] For further discussion of Dr Scott's views see below, pp. 408-410, as well as the chapter on "The Development of International Law" in Volume II., and that on "The United States" in Volume III. A similar criticism of Dr Scott's view, as put forward in "Sovereign States and Suits before Arbitral Tribunals and Courts of Justice," is made in the *British Yearbook of International Law for 1926*, pp. 242-243.

[3] Article 38 of the Statute. See below, pp. 407-408.

Court must give way to closer definition when states are asked to agree beforehand and once for all (or for a period of years) to bring questions before the Court at the request of either party —for it is such agreement that constitutes what is known, not quite accurately, as the compulsory jurisdiction of the Court (in America the phrase " affirmative jurisdiction " is often preferred). Therefore in the optional clause, by which those who sign it recognize the jurisdiction of the Court " as compulsory *ipso facto* and without special agreement in relation to any other member or state accepting the same obligation," the definition of legal disputes reappears.[1]

The form given this definition in Article 36 of the Statute shows a general likeness to that in The Hague Convention as modernized and expanded in Article XIII. of the Covenant, and is identical with that of the Jurists' Committee's draft. It reads as follows :

" All or any class of legal disputes concerning: (*a*) the interpretation of a treaty; (*b*) any question of international law; (*c*) the existence of any fact which if established would constitute a breach of an international obligation; (*d*) the nature or existence of the reparation to be made for the breach of an international obligation."

In the event of a dispute as to whether the Court has jurisdiction the matter is settled by the decision of the Court.

States may sign the optional clause in whole or in part, unconditionally or on the condition of reciprocity.[2]

(b) *Its Importance and Growth*

The number of states that have so far adhered to the optional clause is not very impressive,[3] but Germany's ratification early in 1928 is expected to lead to France withdrawing the reservation attached by that country to its signature in September 1924.[4] France and Germany acknowledged the compulsory jurisdiction of the Court in their mutual relations by the Locarno treaties,[5]

[1] Under the Locarno treaties, however, the Court has compulsory jurisdiction on all questions where the parties may be in conflict as to their rights (see above, pp. 384-385). No doubt, however, in a contested case the Court, when deciding whether or not a question could be classed as a conflict of rights, would apply as a test the definition of legal disputes given in Article 36 of the Statute.

[2] The reference to reciprocity is really redundant in view of the previous statement that compulsory jurisdiction applies only in relation to states accepting the same obligation. See text of Article 36 in Annex C.

[3] See above, pp. 377-378.

[4] France signed the optional clause with the condition that her ratification should take effect only when the Geneva Protocol for the Pacific Settlement of all disputes came into force. See *The League, The Protocol, and the Empire*, by Roth Williams, and Volume II. of this book.

[5] See Volume II. for a full description of the Locarno settlement and the developments to which it has given rise.

and in them Germany acknowledged the Court's compulsory jurisdiction in her relations with Belgium, Czechoslovakia and Poland.

The Court is granted compulsory jurisdiction in an increasing number of local arbitration treaties, as well as in certain classes of questions in a number of general (mostly technical) conventions and in such instruments as the mandates and minorities treaties, certain parts of the peace treaties, the constitution of the International Labour Organization and labour conventions.[1]

As to other treaties and conventions giving the Court compulsory jurisdiction the number is already formidable, and growing steadily. Forty pages (pp. 39-80) of the *Third Annual Report of the Permanent Court* is devoted to an enumeration of these agreements, and a special series of publications (Collection of Texts governing the Jurisdiction of the Court, series D) has been found necessary to give a review of the jurisdiction thus conferred on the Court.

The reasons given at the time of the constitution of the Court against immediate general acceptance of its compulsory jurisdiction were essentially, as we have seen,[2] of a temporizing nature, and implied that the time would come when acceptance became inevitable. The governments that still refuse to submit to the optional clause are being subjected to increasing pressure on the part of their public opinion, and an almost plaintive note is creeping into the arguments with which they still try to stave off the moment of signature. The truth of Professor de Lapradelle's remark in the Committee of Jurists is being demonstrated :

> " There is an immutable law in the evolution of legal institutions which shows that an optional jurisdiction has always, sooner or later, been followed by a compulsory jurisdiction." [3]

Advisory Opinions

(a) *In the Jurists' Committee*

By Article XIV. of the Covenant it is stated that " the Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." The Jurists' Committee proposed an article in the Statute on the jurisdiction of the Court in giving advisory opinions, with a distinction between

[1] See above, pp. 229, 233. [2] See above, pp. 366-367.

[3] *Cf.* also Sir Frederick Pollock's remark: " At last we have a real jurisdiction; not yet compulsory, but according to the best judgment of historians all jurisdiction was voluntary to begin with " (in an article entitled " The Permanent Court of International Justice " appearing in the *British Yearbook of International Law for 1926*, p. 135), and Politis' analogy, above, p. 288.

" questions " to which the Court should give an answer by a sub-committee of some of its members and " disputes " on which the full Court should give its opinion, observing procedure identical with that in hearing cases. The idea was that a " question " was abstract and did not preclude the matter at issue coming subsequently before the Court in the form of a dispute, whereas the Court's opinion on a dispute should be given in as morally decisive a form as possible. The Jurists' Committee's text incidentally provided that " the Court *shall* give an advisory opinion upon any question or dispute of an international nature referred to it by the Council or Assembly," which coincides with the French text of Article XIV. of the Covenant (" *elle donnera aussi des avis consultatifs*," etc.), but not with the English, which, as has been shown above,[1] was the text in which the Covenant was framed. There was considerable doubt in the Jurists' Committee as to whether or not the Covenant bound the Court to reply when asked by the Council or Assembly for an advisory opinion.

(b) *In the Assembly*

Later, when the matter was discussed at the Assembly and the compulsory jurisdiction of the Court suppressed, it was considered that the opening phrase of Article 36 of the Statute, stipulating that " the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force," covered the reference to advisory opinions in the Covenant. The Statute therefore contains no mention of advisory opinions—a fact which may also be accounted for by the considerable divergencies of opinion that manifested themselves during the discussion in the Assembly as to whether or not there should be distinctions in procedure between " disputes " and " questions," as well as regarding the form in which the Court should deal with either or both matters.

(c) *In the Rules of the Court*

When the Court came to work out its rules it dealt with advisory opinions on the basis of a memorandum prepared by Judge Moore, the American member, who pointed out that the English text quite clearly gave the Court the right to exercise its discretion as to whether or not to reply to a request for an advisory opinion, and argued that without such discretion the giving of advisory opinions might be prejudicial to the prestige and working of the Court. This view was adopted by the Court, and was acted upon the very next year (1923) when the Court refused to

[1] See above, p. 98.

reply to a request by the Council for an advisory opinion on the so-called East Carelia case.[1] The Council did not question the propriety of the Court's action, which was felt to have established a precedent of first-class importance in that it demonstrated the independence of the Court. The Council has always asked for opinions on legal issues and has so far always accepted the opinion of the Court, and it is generally considered that it would not be morally possible for it or the Assembly to reject such an opinion. Advisory opinions are delivered by procedure [2] which approximates to that employed in hearing cases, and the opinion is given publicly with a reasoned statement of the arguments that led the Court to adopt it.

(d) *In Practice*

Thus the three apprehensions which were freely expressed at the outset of the Court's career with reference to advisory opinions have been dispelled—namely, (1) that advisory opinions would be given on non-legal matters, or in non-legal forms; (2) would not be accepted when given; (3) would constitute a sort of servitude on the Court—force it to act as the instrument or agent of the Council and Assembly by making it give opinions whether it felt it could properly do so or not. If any of these apprehensions had been realized, the independence and authority of the Court would to some degree have been impaired. On the basis of five years' experience they may all be pronounced to be fanciful, and on the contrary the fact noted with satisfaction, that advisory opinions have proved a most fruitful and practical method of aiding in the solution of conflicts, and are being quoted as freely by international jurists as the Court's judgments, and thus proving equally useful for building up international law.[3]

The last word on the subject has been said by the Court itself. When the amendment to the Rules of Court of September 7, 1927, was adopted, allowing national judges to be added to the Court when it dealt with an advisory opinion that related to a dispute between two or more parties,[4] the Court based its decision on the following considerations:

" The Statute makes no mention of advisory opinions, but leaves it to the Court to settle its procedure in regard to them. The Court in the exercise of its powers has deliberately and intentionally assimilated its advisory procedure to its contentious procedure, and the results obtained have abundantly justified

[1] See Volume II. [2] See below, pp. 410-411.
[3] See Volume II., chapter on " The Development of International Law."
[4] See above, p. 375.

this attitude. The prestige enjoyed at present by the Court as a judicial tribunal is to a large extent due to the importance of its advisory activities and to the judicial way in which its advisory activities have been regulated. In practice, when parties come before the Court, there is only a purely nominal difference between contentious and advisory matters. The principal difference consists in the way in which the matter is brought before the Court, and even this difference may virtually disappear, as was the case in the question of the naturalization decrees in Tunis and Morocco. It thus appears that the view according to which advisory opinions have not compulsory force is rather theoretical than real." [1]

Advisory Opinions and the United States

There the matter would have rested—since an ounce of experience is worth any amount of *a priori* prediction—were it not for the United States. But a large part of American opinion is hostile to advisory opinions, and this is partly responsible for the failure of the United States to adhere to the Protocol of Signature of the Statute. The practice of giving advisory opinions is known in several American states, and of course the American legal system, being based on that of Great Britain, is familiar with the use of advisory opinions in English jurisprudence.[2] The general feeling in the United States is, however, against giving advisory opinions. This feeling is based partly on the historic tradition of the separation of the three powers of government—the judicial, legislative and executive (the so-called theory of checks and balances that

[1] Extract from the report of the Committee of Three (on procedure), adopted by the Court in September 1927, and quoted by the Roumanian Foreign Minister, M. Titulescu, at the sixth meeting of the forty-ninth session of the Council in March 1928.

[2] See M. O. Hudson, *The Permanent Court of International Justice*, chapter on "Advisory Opinions of National and International Courts." *Cf.* also James Brown Scott, *The Judicial Settlement of International Disputes*, pp. 44-45: "The last of the matters upon which I would touch is that of advisory opinions, and I do so with full knowledge that I am treading on dangerous ground. The Supreme Court was of the opinion, in the early days of its existence when it had a full Bench and an empty court-room, that its duty was to decide, not to advise. That action may have been wise or unwise, but it does not of necessity follow that an advisory opinion would have been the exercise of non-judicial power. The whole history of English law is against such a conclusion, and English law and English practice are the basis of American law and practice. It cannot be successfully contended, it would seem, that the Supreme Judicial Court of Massachusetts, for such is its official name, is performing a non-judicial function whenever it renders one of its numerous advisory opinions to the duly constituted and authorized officials of that commonwealth. In some other states the practice exists, and does not seem to work badly. I would not advocate the introduction of the system in states where it does not exist, nor criticize the Supreme Court for its refusal to render advisory opinions. I only maintain that an advisory opinion is not a non-judicial function, inasmuch as it has been exercised by the judges of England for centuries and is exercised by American courts of the highest repute without harm to their admittedly judicial decisions. . . . Finding of facts is in our system a judicial function; the finding of the rule of law applicable to a concrete situation is a judicial function and none the less judicial because judgment is not entered. In international organization the judicial function is not changed merely because it operates on a larger scale, and, indeed, its usefulness is greater for this very reason."

inspired the fathers of the Constitution and was based on Blackstone's misunderstanding of the British Constitution). This attitude is stiffened by the fact that the United States has a rigid written constitution conferring peculiar powers on the Supreme Court and fostering the view, particularly common in the United States, of law as something which is, or should be, immutable and perfect, with no earthly ties or origins, but a separate entity to be applied " automatically " in the courts. This tendency is further strengthened by the peculiar derived sense of the words " politics," " political " and " politician," which in modern American parlance are almost terms of abuse. In home affairs they conjure up in the mind of the good American citizen " pork " in Congress, obstruction (filibustering) in the Senate, oil scandals in the Cabinet, the antics of exuberant Yahoos like Big Bill Thompson of Chicago in municipal politics, etc. In foreign affairs, particularly when they occur in the phrase " European politics and diplomacy," the words convey a shuddering sense of tattered and whiskered foreigners stealthily conferring in corners on how to put one over on pure-hearted, rich and guileless Uncle Sam. This general mood is pointed in the case of the Permanent Court by antipathy to the League—itself partly a legacy of American " politics " of the brand just described—and leads to the desire to sever the connexions between the League and the Court as a condition for adhering to the Statute of the latter.

(a) *The Hughes Reservations*

The original reservations proposed by Secretary of State Hughes, who is a lawyer and a statesman, presented no difficulty from the point of view of the members of the League and involved no change in the constitution and functions of the Court, nor consequently in its relations with the League, but merely defined the consequences resulting from the fact that America was not, and did not propose to become, a member of the League.

(b) *President Harding's Suggestions*

But the late President Harding, who laid no claim to either statesmanship or legal erudition, saw fit to propose various alterations in the Statute of the Court for the sake, as he artlessly put it, of " harmonizing opposing elements " and " giving consideration to our differences at home." [1]

This is not the place to describe the tragi-comedy of the discussions that ensued in and out of the Senate. The whole subject is dealt with in the chapter on " The United States " in Volume III.[2]

[1] Quoted by Hudson, *ibid.*, p. 243.

[2] See also Hudson, *op. cit.*

But three of the points emerging from the discussion must be considered in this connexion.

(1) *The Right of States to ask for Advisory Opinions*

In the first place the suggestion was made by President Harding and repeated by others that the power to ask advisory opinions should be extended to any state or group of states. The first objection to this is, that unless states accept the compulsory jurisdiction of the Court they would hardly agree to being haled before it for the purpose of advisory opinions.

The second answer is given tersely and cogently by A. de Bustamante, himself a judge on the Court, in the following terms:

> "Not only . . . would they [these proposals] have done much harm to the work of the Court but also . . . they would have made it possible to bring before the Court under the guise of advisory opinions disputes which the other party did not want to submit to the Court in the form of a litigation; it would have been a clever way of finding out what the Court's decision would be in a subsequent litigation or of learning what would be the best reasons for refusing to compromise or arbitrate the question."[1]

If states are parties to a legal dispute they must be willing to submit it to compulsory jurisdiction and cannot claim the right to enjoy, as it were, a "preliminary canter," to see whether or not they would choose to have the Court sit in judgment.

The third reason is closely connected with the foregoing: the Court is set up, not by individual states, but by the organized community of nations, known as the League. It is not for the individual members of this community to ask the Court for advisory opinions, but for the two governing organs of the community, the Assembly and Council. When it was suggested, soon after the establishment of the United States Constitution, that the Supreme Court should give advisory opinions, the proposal was that the United States Administration and Congress should have the power to ask for such opinions, not the individual states. Within states—*e.g.* Massachusetts—where the practice of advisory opinions exists, it is the State Legislature and Governor who are authorized to ask for advisory opinions, not individual congressmen. This rough analogy may be applied *mutatis mutandis* to the League.

(2) *The Abolition of Advisory Opinions*

In the second place a suggestion was made, also by the late President Harding, that the power of giving advisory opinions should be abolished. The idea behind this was partly antipathy to

[1] *The World Court*, by A. de Bustamante, § 238.

advisory opinions as such and partly a desire to cut the connexion between the Court and the League. It was believed that because of the power to give advisory opinions the Court was somehow "in bondage" to the League—obliged to act as its legal adviser or "private attorney," and therefore not really independent. The curious thing is the tenacity with which this belief is still held in distinguished quarters, in spite of its demonstrable falsity, as shown by the Court's decision in 1923 and accepted by the League. The fact should be firmly grasped that the Court is free to give or withhold an advisory opinion at its discretion.

(c) *The "Fifth Reservation"*

The third point was raised by the famous fifth reservation,[1] proposed by the American Government as a condition for adhering to the Statute. The crucial clause of this reservation says:

> "Nor shall it [the Court] without the consent of the United States entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."[2]

It was contended in America that this clause merely gave the United States the same rights as the permanent members of the Council, any one of which could veto a proposal in the Council to ask the Court for an advisory opinion. In the Conference of Signatories held to consider the United States reservations there was a fairly general feeling of hesitation about granting the United States the same rights as a permanent member of the Council so long as they refused to share the duties and responsibilities of even the least member of the League. The Council considers the question of an advisory opinion collectively, in the course of carrying out its duty of trying to get a dispute settled peacefully, with the full knowledge that any state holding up this process has to subject itself to the pressure of the rest of the Council based on the Covenant, and expose itself to the full blast of public opinion. The responsibility of the permanent members is particularly heavy, for they would bear the chief share of the burden if the Council failed to maintain peace. The United States would be in a privileged position in fact, quite apart from the question of whether the veto power she claimed gave her only legal equality or something more. However, in spite of this hesitation, and in view of the

[1] This reservation, it is said, was put in in response to the lobbying at Washington of Judge Moore, who in his desire, as he thought, to free the Court from "politics" himself plunged headlong into American politics. The result would hardly appear to warrant this departure from judicial reserve.

[2] The other four reservations were roughly similar to those proposed by Secretary of State Hughes and raised no serious difficulties.

great importance attached by the members of the League to the moral gesture of the United States, crippled as it was by reservations, the Conference accepted the request for equality of legal position. Only here the difficulty arose that in League practice it had never been decided whether a request for an advisory opinion is to be treated as a matter of procedure requiring a mere majority of the Council or Assembly, or whether it is a so-called " decision " requiring unanimity. There were strong practical objections to settling this question at the time, as we shall see below,[1] and it was therefore decided not to touch this point, but simply to inform the United States of the position and add that the United States would have the same right as the members of the Council, whether or not that right subsequently proved to be the right of veto.

MAJORITY OR UNANIMITY FOR REQUESTING ADVISORY OPINIONS?

This reply concentrated attention on the question of the procedure to be applied by the Council in asking for an advisory opinion, which, quite apart from the circumstances, is a matter of importance.

(a) *The Argument for a Majority*

On the one hand it is argued [2] that an advisory opinion has legally only the force of an opinion, not of a decision, and is asked for by the Council or Assembly as part of the process of arriving at the settlement of a dispute. If the advice is taken it is incorporated in a report which the disputants are free to accept or reject. Therefore obtaining the Court's opinion is a matter of procedure, just as would be the appointing of a committee of jurists or any other committee by the Council in order to help it in settling a dispute.

" It may surely be held that the Council is entitled to take legal advice on legal points involved in legal disputes and to take the best that is available—that is to say, the advice of the Permanent Court; and just as it can seek advice on other points as a matter of procedure and by a majority vote, so it can on matters of law." [3]

(b) *And for Unanimity*

The opposing argument is stated with great learning and lucidity by Professor A. D. McNair.[4] The author holds that advisory opinions have such moral authority and are conducted by

[1] P. 397.

[2] *E.g.* by Professor P. J. Baker in " The Obligatory Jurisdiction of the Permanent Court of International Justice " in the *British Yearbook of International Law for 1925*, pp. 75-76.

[3] Professor Baker, *ibid.*, p. 75.

[4] In the *British Yearbook of International Law for 1926*: " The Council's Request for an Advisory Opinion from the Permanent Court of International Justice."

procedure so similar to that obtaining for the hearing of cases (with counsel appearing on each side, etc.) that they are tantamount to litigation.[1] He quotes the opinion of the Court in the East Carelia case in this connexion, where the Court refused to give an opinion, as it was " substantially equivalent to deciding the dispute between the parties," and one party—namely, Russia—did not acknowledge the authority of the Court or the League, and refused to send the necessary documents to enable the Court to form an opinion. He quotes the views of Mr Fachiri, Professor Hudson, and other commentators, emphasizing the equivalence in practice of an advisory opinion of the Court to a final settlement of the judicial issues raised, and concludes that, whereas an advisory opinion on matters of procedure may be asked for by a majority (provided no member of the Council disputes the fact that the question is one of procedure, for if so the Council would have to decide for or against this objection by unanimity), the Council must be unanimous in asking an advisory opinion which is substantially equivalent to direct litigation between the parties to the dispute:

" The League is founded on the principle of the independence and legal equality of states except in so far as the terms of the Covenant depart from that principle. Absolute unanimity is the general rule, and the burden of proof is upon those who assert that in any particular instance absolute unanimity is not required. It is a commonplace that treaty provisions which are restrictive of independence or impose obligations must be restrictively construed, and I beg leave to doubt the soundness of the view that, as it were by a side-wind, states which are members of the League have thus in substance parted with one of the most cherished rights of a state—namely, not to litigate except by its own free choice." [2]

(c) *Conclusion*

Where the League itself has officially registered the non-existence of agreement and such highly competent judges differ, it would be rash to venture an opinion.[3] It may, however, be

[1] *Cf.* the Court's view on the question given in September 1927 and quoted above, p. 391.

[2] *Ibid.*, p. 12.

[3] See, however, the following comment by Professor Lauterpacht, *op. cit.*, pp. 179-180, which would seem seriously to impair Professor McNair's chief argument—namely, the restrictive interpretation of treaties:

" It is frequently maintained that a treaty being a restriction of sovereignty, such of its provisions as impose obligations upon either of the contracting parties must be interpreted restrictively. It is pointed out that the very fact of concluding a treaty constitutes a limitation of sovereignty, and that restrictive interpretation should therefore be a general rule governing the construction of treaty obligations. Now, the maxim *in dubio mitius* is certainly a well-founded rule of private law, but it is only a subsidiary means of interpretation, subject to the dominant principle which says that effect is to be given to the declared will of the parties, and that the compact is to be effective rather than ineffective. But among international lawyers ' restrictive interpretation ' has become almost a catchword, and the attempts to make it a governing consideration in the interpretation of treaties in

suggested as a *via media* that the political likelihood of the Council deciding to ask for an advisory opinion, even on matters of substance, by a majority is likely to increase in proportion as states accept the compulsory jurisdiction of the Court. Obviously when either party can summon the other before the Court it will hardly be possible for either party to deny the right of the Council to ask for an opinion, and much more likely that the Council will ask, if necessary, by a majority. In general, as respect for the Court's authority increases, and parallel with it the authority of the Council in settling disputes, the likelihood will grow that the Council will not be hampered in its peace-making by objections of this sort from the parties, and that if by any chance attempts are made to press such objections, the Council will take a decision in favour of its right to ask for an advisory opinion by a majority. That is why it would be unfortunate, from the point of view of the development of the League, if the Council, in order to dispel the more or less irrelevant fears and prejudices of certain American senators, were to paralyse the future evolution of the League in its fundamental task of settling disputes peacefully. Surely the one cherished right that should be abandoned as quickly as possible is the old anarchic right to refuse recourse to law, and the sooner League practice can be made to grow in that direction the better. If it is growing that way already there should be no artificial obstacles put in its way.

THE SPECIAL CASE OF ARTICLE XV.

(a) *The Theory of "Absolute" Unanimity*

In one respect, however, the practice of the League and the assumptions on which this practice has been based have fixed its procedure, and that is in the case of disputes dealt with under Article XV. of the Covenant. In this respect Professor McNair goes demonstrably too far in suggesting, as he does, that the Council to request an advisory opinion must be unanimous, *including the parties to the dispute.* Paragraph 6 of Article XV. says that :

"If a report by the Council is unanimously agreed to by the members thereto, other than the representatives of one or more of the parties to the dispute, the members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report."

deference to the principle of sovereignty are very frequent. It is obvious that neither the science of international law nor international tribunals can, in the long run, act upon such doctrine without seriously jeopardizing the work of interpretation. Thus the Permanent Court of International Justice said in the Advisory Opinion concerning the Polish Postal Service in Danzig:

"'In the opinion of the Court, the rules as to a strict or liberal construction of treaty stipulations can be applied only in cases where ordinary methods of interpretation have failed.'"

Professor McNair admits the force of the argument that :

" When a final report by the Council under Paragraph 6 of Article XV. only requires ' limited ' unanimity it is absurd that a decision to take legal advice before framing that final report should require absolute unanimity. . . . Such a requirement would seem to defeat the object of Article XV., and to obstruct the Council in obtaining for itself the legal advice necessary for the making of the report." [1]

Nevertheless, on the basis of his restrictive reading of the Covenant, he concludes that absolute unanimity is required everywhere in the Covenant, " except where otherwise expressly provided " (Paragraph 1 of Article V.), such as in matters of procedure, among which he does not think it possible to class advisory opinions, or under Paragraph 6 of Article XV. By this reasoning it therefore follows that absolute unanimity is required wherever in Article XV. it is not expressly dispensed with, as well as, *e.g.*, in Article X. and in all but the last paragraph of Article XVI.

(b) *Consequences of the Theory*

At first glance this proposal seems, to anyone familiar with the way the Council actually gets its work done, so far-fetched and exotic as to make it difficult to realize that it is seriously meant. For instance Paragraph 8 of Article XV. declares that :

" If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

Now since " absolute " unanimity is not expressly dispensed with in this paragraph, and since the Council's finding that a matter is by international law within the domestic jurisdiction of a party is not a question of procedure, it follows from Professor McNair's reading that the Council cannot ascertain whether or not a question is a matter of domestic jurisdiction unless it includes the votes of the parties. As the parties are by definition in conflict on this point, the Council could never achieve the necessary unanimity, and consequently a state could always refuse to have any matter dealt with by the Council by simply pleading that it is a question of domestic jurisdiction and then vetoing the Council's attempts to prove the contrary.[2] This in its

[1] *Ibid.*, pp. 10-11.

[2] Since the Court was established the Council has always, when the objection of domestic jurisdiction was made, asked the Court for an advisory opinion. In view of the legal nature of the issue, any other procedure would be open to serious objections. But on Professor McNair's view one party could veto this!

turn would mean striking at the root of the whole League system for settling disputes, which is based on the necessity for submitting every matter without exception to discussion and ruling out the *ipse dixit* of arrogant sovereignty.

Again, under Article X. of the Covenant the Council in cases of any external aggression, or threat or danger of such aggression, against the territorial integrity and political independence of a member of the League " shall advise upon the means by which this obligation shall be fulfilled." By Professor McNair's theory, since a state supposed to be exposed to this aggression or threat of aggression and a state accused of such act must appear as members on the Council under Paragraph 5 of Article IV., and since " absolute " unanimity is not expressly dispensed with in this article, the Council can advise only with the consent of the parties. This interpretation would reduce Article X. also to an absurdity.

And under Article XVI. of the Covenant the Council, unless and until it excludes the Covenant-breaker from the League under Paragraph 4, cannot ascertain whether there has been a breach of the Covenant, nor if the breach has occurred can it recommend under Paragraph 2 what armed action if any should be undertaken by the members of the League without the vote of the alleged Covenant-breaker.

These are only some of the consequences that would follow from Professor McNair's reading of the Covenant, but they are enough, it may be submitted, to show that this reading would make the working of the League impossible.

(c) *The Practice of the Council*

The way the Council has actually interpreted the Covenant, and was bound to interpret it if it did not wish to make nonsense of the intention of the framers of the Covenant and reduce itself to futility, is accurately described as follows by Schücking and Wehberg [1]:

" The English text ' as a member ' in Paragraph 5 of Article IV.[2] shows that the bringing of members of the League not represented on the Council to its meetings on the basis of Paragraph 5 also as a rule gives them the right to take part in all discussions and in the voting. . . . The right to vote can, however, not be allowed the States admitted to the Council if in corresponding cases it would not be granted to a member already represented on the Council or when special circumstances require a different decision. The necessity of a common-sense

[1] *Ibid.*, pp. 326-328.

[2] These three words do not occur in the French text—another of the numerous cases of discrepancy between the two.

and not too pedantically verbal interpretation is particularly great in the case of Paragraph 5. Thus, a State invited to the Council has not the right to vote when it has previously undertaken to accept the decision of the Council, in particular therefore when the Council acts as arbiter in the matter at issue. . . . The mediation procedure under Article XV. is governed by particular rules. Paragraph 6 of this article states that the votes of the representatives of the parties are not to be counted in reaching unanimity. This makes it clear that the representatives of the parties are to take part in the voting. True this has been expressly provided for only in the case when the remaining members of the Council reach unanimity, but there is no reason for assuming that the parties are not to vote on majority decisions. . . . A member admitted to the Council is further not allowed to vote when the question at issue is its exclusion from the League (Article XVI., Paragraph 4). Furthermore, when it comes to arriving at an opinion as to whether the Covenant has been infringed under Articles X. and XVI. the voices of the States not members which are accused of having resorted to war, or against which war is alleged to have been undertaken, are not counted."

In other words, the Council takes a broad view, based on the practical exigencies of its work, of the right of states invited to sit on the Council to vote. In particular, Schücking and Wehberg contend that whereas such states vote on all matters under Article XV., their votes *are never counted on any question under this article where the Council has to be unanimous.*[1]

(d) *The Aaland Islands Case*

To anyone who has watched the Council at work this interpretation does indeed appear to describe accurately the view on which the Council has already acted under Article XV., as under other articles of the Covenant. It is of course difficult to prove a tacit assumption, but in this case there are three precedents, one of which is quoted by Schücking and Wehberg, the second laid down in the East Carelia case, and the third (Mosul) quoted, curiously enough, by Professor McNair, suggesting the correctness of this view: Schücking and Wehberg describe the action of the Council in the Aaland Islands dispute as follows:

"The Council, and at the request of only one party, has the right under Paragraph 8 of Article XV. to ascertain whether according to international law the dispute is within the solely domestic jurisdiction of that party. This provision in Paragraph 8, as the Council made clear in its decision on the Aaland Islands question, is applicable whether the dispute has been brought before it by a party under Article XV., Paragraph 1, or has been dealt with *ex officio* under Article XI., Paragraph 1. The Council's decision in this case is not a matter of procedure, for the question at issue is that of ascertaining the juridical nature of the dispute, and admittedly the validity of the objection is equivalent to a rejection of the claim of the other party. Consequently the Council has to

[1] Whether or not they are counted on questions of procedure need not be considered in this connexion, and is of small importance. Schücking and Wehberg think they are, as shown above.

decide on the objection not by majority but by unanimity. In doing so the votes of the parties are not counted, by an analogous application of Paragraphs 6 and 7 of Article XV." [1]

Thus in the Aaland Islands case the Council considered the votes of the parties did not count in endeavouring to ascertain whether or not the dispute was a matter of domestic jurisdiction, although the question at issue arose under Article XI., where the parties are as a rule supposed to be allowed to vote, and not under Article XV. (strictly speaking, the dispute was not dealt with even under Article XI., but only by analogous application of that article, since Finland was not at that time a member of the League [2]).

(e) *The East Carelia Precedent*

In the East Carelia case the Council asked the Court for an advisory opinion in spite of the fact that one party—namely, the Soviet Union—refused to appear before the Council, or to recognize the jurisdiction of either the Council or the Court. The Court refused to give an opinion, as has been pointed out above, but expressly ruled out the failure of both parties to agree to the Council's request as a reason for this refusal. The Council in taking note of the Court's report remarked that :

" The Council feels sure that the opinion expressed by the Court in connexion with the procedure described by Article XVII. of the Covenant could not exclude the possibility of resort by the Council to any action including a request for an advisory opinion from the Court in a matter in which a State non-member of the League unwilling to give information is involved if the circumstances should make such action necessary to enable the Council to fulfil its functions under the Covenant of the League in the interests of peace." [3]

It will be noted that the Council makes short work of legal subtleties and takes the broad ground of its duty under the Covenant to ensure peace.

(f) *The Mosul Precedent*

Finally, in the Mosul case, the Turkish representative argued that the Council could ask the Court for an advisory opinion only by a unanimous vote concurred in by both parties. On this M. Scialoja, the President of the Council at the time—and also, it may be added, one of the framers of the Covenant and a high legal authority—remarked that the question of the competence of the Council, on which the opinion was to be asked, was a matter of procedure and so could be dealt with, if necessary, by

[1] *Ibid.*, p. 589.
[2] See Volume II.
[3] Minutes of the Council meeting held in September 1923.

a majority. He added : " In any case, however, according to the Covenant the votes of the interested states were not counted in calculating unanimity." The Council then adjourned to discuss the matter, and after the adjournment the President repeated his view even more explicitly :

> " He thought . . . that in the present case the Council might follow a stricter rule, in accordance with the principle contained in Article XV. of the Covenant, which contemplated a unanimous vote, but in reckoning unanimity the votes of the interested States should not be counted."

Thereupon, the question being put to the vote :

> " The report of M. Unden in favour of requesting the advisory opinion of the Permanent Court of International Justice at The Hague was unanimously adopted, the representative of Turkey voting against the report."

The reply of the Court and the subsequent developments in the case have long since passed into history.

In other words, the quotations given from the minutes of the Council, and all of them cited by Professor McNair, show that the Council not only expressed the view as a matter of course that it had the power under Article XV. to ask the Court for an advisory opinion *without counting the votes of the parties, even on the assumption that unanimity was required,* but acted on this view, and its action was accepted by the Court. There really would appear little to be said in face of this large and solid fact. And yet after putting it on record Professor McNair goes serenely on to argue on theoretical grounds, shared by himself and the Turkish representative, for the very view that the Council decisively rejected in theory and practice in the very case he cites!

(g) *Conclusion*

To anyone who was present during the Council's handling of the Mosul case, and is reasonably familiar with the way in which the League does its work, it appears self-evident that no member of the Council has ever dreamed of the possibility that the vote of a party should count in reaching unanimity on *any* issue arising out of Article XV. On this occasion the question of whether a mere majority or " limited " unanimity was required for advisory opinions was seriously debated, and a good deal of opinion expressed in favour of a majority. But only Turkey put forward a claim that the votes of the parties too should be counted, and this was looked upon rather as a Gilbertian interlude than a genuine contribution to the debate.

Therefore it is unfortunate that on page 55 of the fourth edition

of Oppenheim's *International Law* (vol. ii.), appearing in the summer of 1927, the learned editor (Professor McNair) should repeat his erroneous view that the Council in requesting an advisory opinion from the Court cannot act without the votes of the parties, even under Article XV. of the Covenant. It may be hoped, for the sake of the authority of the work in question, that this mistake will be corrected in future editions.

(h) *Inquiry into Motives*

Professor McNair admits that his view proceeds not from strictly legal considerations, but from his feelings upon the matter :

> " I feel that if one looks at the Covenant as an English lawyer would look at a written contract, a fairly strong case can be made out for the view that a decision to request an advisory opinion is a matter of procedure and merely requires a simple majority of votes. Particularly impressive is the argument that when a final report by the Council under Paragraph 6 of Article XV. only requires ' limited ' unanimity, it is absurd that a decision to take legal advice before framing that final report should require absolute unanimity. On the other hand, the Covenant is not an English contract, but an international treaty of a very peculiar kind—indeed something more than a treaty, something between a treaty and a solemn declaration of the Rights of Nations—and this legalistic manner of interpreting it seems to me to be out of place. It offends one's ' League sense.' "

Now it is intelligible that a jurist, while anxious on grounds of " League sense " that the moral authority of the Council's recommendations and reports should be increased, might regretfully find that there were insuperable legal obstacles to a particular course proposed to this end. But that a jurist, while admitting that there is a strong legal case for the proposed course, should object to it precisely because it does increase the Council's moral authority and make it more difficult for disputants to refuse a peaceful solution, and should then sustain his objection by referring to his " League sense," is surely a daunting mystery. We may perhaps discern the key to the mystery in the further confession that :

> " This opinion may be regarded as revealing the cloven hoof of the theory of sovereignty now so unpopular, but that theory cannot be regarded as obsolete."

Evidently Professor McNair's " League sense " coincides with his pre-war sense of sovereignty. To others the kind of sovereignty that cherishes the privilege of refusing resort to law will seem too akin to anarchy to be readily reconcilable with their " League sense."

THE LAW APPLIED BY THE COURT

The law applied by the Court is defined as follows by Article 38 of the Statute :

" (1) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
" (2) International custom, as evidence of a general practice accepted as law;
" (3) The general principles of law recognized by civilized nations;
" (4) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

" This provision shall not prejudice the power of the Court to decide a case *ex æquo et bono*, if the parties agree thereto."

On this article Mr Fachiri [1] remarks :

" Subject to the single exception laid down in the last paragraph, this article ensures that the decisions of the Court shall proceed and be based solely upon rules of law. It is this principle, more perhaps than any other single feature, that establishes the Court's position as a judicial, as distinct from an arbitral, tribunal. It is to be observed that neither the Permanent Court of Arbitration set up by The Hague Convention nor any other previous international tribunal is or has been bound by such a provision. The Court administers law, but where the relations of States *inter se* are concerned it is a matter of difficulty to define the law that is applicable. This has been accomplished in Article 38 with prudence and breadth of vision. . . . The Court is subject to the rule of law in dealing with and deciding the matters submitted to it, and it is important to bear in mind that this is true of disputes and questions referred to it for advisory opinion equally with cases strictly contentious in character. In both classes of matters the Court is bound to act as a judicial tribunal and not as a body of arbitration or conciliation, and consequently, as already explained, the opinions as well as the judgments rank as authorities creating precedents in international law."

The Jurists' Committee in laying down the law the Court was to apply proposed that the authority of the various items should be in the order given. Although this has not been expressly stipulated in the Statute, out of a desire to leave the matter elastic and so give the Court a certain amount of discretion, it is fairly clear that this in fact will be the order of authority applied. International conventions are the most explicit form of law imaginable between the parties, and it is in this sense that they are recognized in Paragraph 1 of Article 38. It must be added that the multiplying of conventions, particularly of conventions adhered to by a large number of states, will affect custom and general principles of law—that is, may eventually be of importance in connexion with Paragraphs 2 and 3 of the article.[2]

[1] Pp. 90 and 93.

[2] See above, p. 279

" International custom as evidence of a general practice accepted as law " is a conception that has been already sufficiently discussed in connexion with the sources of international law.[1]

" The general principles of law recognized by civilized nations " may be taken to illustrate the remarks quoted above[2] on the use of reason in deducing legal principles from an accumulation of cases and applying these principles to new cases. Mr Fachiri suggests that this heading

> " embraces those broad rules and maxims, whether more particularly associated with the Roman or Anglo-Saxon systems of jurisprudence, which are common to the good sense and conscience of the more enlightened portions of mankind and, therefore, universally recognized among civilized nations."

The remarkable treatise by Professor Lauterpacht, *Private Law Sources and Analogies of International Law*, already referred to,[3] is devoted largely to showing how under this paragraph of Article 38 the International Court may rely upon generally recognized principles of private law and thus tap an almost inexhaustible source for the enrichment and consolidation of international law. It would be difficult indeed to exaggerate the potential importance of this paragraph as a method of developing international law through the activities of the Court, just as it would be difficult to overestimate how big a part the work of the Court may play in promoting the growth of international law. Those who speak of codifying international law as though it were the first step in permitting an international court to function entirely fail to realize the enormous part that has been played, notably in England, by the courts themselves in developing law.

The fourth paragraph contains several important points. In the first place, although judicial decisions and the teachings of the most highly qualified publicists are classed together as " subsidiary means for the determination of rules of law," the legal authorities[4] seem agreed that the views of publicists will be consulted merely as a means of ascertaining what the law in fact is, as they do not themselves constitute law, while judicial decisions will vary in value according to the court giving them, the greatest weight as precedents being attached to the Permanent Court itself, after it to those of other international tribunals, and finally the judgments of the highest national courts.

[1] See above, pp. 277-280. In general, note the close similarity of the headings of Article 38 to the main groups mentioned as sources of law above, pp. 278-279.
[2] Pp. 276, 277.
[3] Pp. 274-276.
[4] *E.g.* Fachiri, *ibid.*, pp. 91-92.

(a) *The Use of Precedents*

In this connexion the further point arises that under Article 59 of the Statute "the decision of the Court has no binding force except between the parties and in respect of that particular case." This has been taken to mean that the Court cannot build up a system of case law by the accumulation of precedents, and even that it is precluded from functioning as a real court at all.[1] This view is, however, unanimously rejected by jurists, who point out in the first place that the intention of Article 59 is only to apply the Continental rather than the Anglo-Saxon legal system, such as that in the French code forbidding judges to decide a case by holding it was governed by previous decisions, and to prevent states not parties to the case but bound by the same treaty from being bound by the decision whether they are present or not.[2] The French code has not in fact prevented French judges from being governed by precedents.[3] The whole matter is commented on as follows by A. P. Fachiri[4]:

"This [Article 59] does not, however, mean that these decisions will not have authority as precedents. On the contrary, as has been more than once pointed out, it will be one of the Court's most important and valuable functions to build up a coherent international jurisprudence by means of its decisions. Moreover, it is part of the inherent nature of all judicial bodies to follow their own decisions in subsequent cases to which they are applicable. All that is meant by Article 59 is that a given decision is not as a matter of legal obligation binding upon States other than the immediate parties, and even upon them only in respect of the particular case under adjudication. It is submitted that the object of the reference to Article 59 in Article 38 is to make it clear that the Court itself is not rigidly bound by a previous decision in the sense that it is precluded from examining and dealing with each case as it arises upon its merits. It can be confidently stated that head 4 of Article 38 empowers the Court to follow its decisions and the principles resulting from them whenever they are properly applicable."

Professor M. O. Hudson says:

"Since the judges of the new Court are to write reasoned opinions, the decisions themselves should furnish in time a body of international law which the Court may apply. Perhaps this will prove to be the greatest advantage of

[1] *Cf.* Charles C. Morrison, *The Outlawry of War*, p. 142: "The statute of this league court expressly forbids the use of all previous decisions as precedents in any subsequent case . . . the principle by which law could be evolved, be it ever so slowly, under the function of the court is thus ruled out by its own statute."

[2] The Statute itself (Articles 62-63) provides for the intervention of a state which has an interest of a legal nature that may be affected by the decision, or which is a party to a convention being construed by the Court. If a state takes advantage of this right it is bound by the Court's decision in the same way as the parties.

[3] *Cf.* Professor M. O. Hudson, *The Permanent Court of International Justice*, pp. 16-17.

[4] *Ibid.*, p. 92.

having a permanent international judiciary, instead of arbitrators chosen *ad hoc*. The same persons sitting as judges in a number of cases must of necessity rely to some extent on their opinions as expressed in previous decisions. They will doubtless do so, even though they may deny that the Court's decisions are formally binding as precedents. The framers of the Statute were careful to provide (Article 59) that ' the decision of the Court has no binding force except between the parties and in respect of that particular case.' This seems to involve more than a statement of the Anglo-American principle of *res judicata*. It seems to forbid the Court's adoption of the alleged practice of the British House of Lords, that previous decisions will not be overruled. But it would not seem to preclude the Court's following the Anglo-American doctrine of *stare decisis* and giving to its decisions the force as precedents which will weave them into a body of case law. . . . Whatever the effect of the Statute with reference to *stare decisis* as a legal doctrine, the psychological fact of *stare decisis*—the tendency of the same men's minds to follow the same paths to the same conclusions—should ensure that the Court will make a great contribution to the international law of the future." [1]

Here again an ounce of practice is worth a pound of theory, and it is noteworthy that the Court has already on many occasions quoted its own previous judgments or advisory opinions as precedents when dealing with fresh cases or giving further advisory opinions.[2]

(b) *Considerations of Equity*

There remains the provision concerning the power of the Court, if the parties agree, to decide a case *ex æquo et bono*. It should be noted that this is a power exercised by the Court in its discretion, although subject to the agreement of the parties.

In view of the fragmentary and vague state of international law and the conflicting views on its dictates even where the existence of rules are admitted, parties may submit a dispute that is not plainly covered by an unambiguous existing rule. In such cases under this provision the Court may apply the general principles of equity and justice. Some such provision would appear necessary in view of the impossibility of drawing a sharp distinction between " legal " and " political " cases, the fact that this line is continually shifting as fresh categories of questions enter the " legal " domain, and that the parties are free, if they so agree, to bring practically any case before the Court. In the circumstances there must inevitably be a number of " border-line " cases which are as much political as they are legal, but which the parties wish

[1] *The Permanent Court*, p. 16.

[2] *E.g.* Birkenhead, *op. cit.*, p. 176, points out that in its advisory opinion No. 10 the Court referred to its judgment in the Wimbledon case, and in its opinion No. 13 to the principles enunciated in opinions Nos. 8 and 9. The citing of its own judgments or opinions as precedents has become a frequent and normal practice of the Court.

to refer to the Court and that the Court can deal with if so empowered.

(c) *Dr Scott's Views*

In the light of these considerations it seems fairly clear that this provision greatly increases the usefulness of the Court and makes it easier gradually to enlarge the range of matters covered by international law. This indeed is the view generally taken. But Dr James Brown Scott [1] comments :

" ' This provision,' it is said, meaning the four rules dealing with the authorities to be invoked and the order of their application, ' shall not prejudice the power of the Court to decide a case *ex æquo et bono*, if the parties agree thereto.' This means in plain English, instead of technical Latin, that the judges of the Court may act as arbiters, and the Court itself act as a Tribunal of Arbitration at the request of the contending parties. That is to say, two parties may change the nature of the Court at their pleasure, and have its judges act as diplomats in the negotiation of a dispute without reference to existing law, instead of having it always act as a Court of Justice, in accordance with law, or refusing to act if law does not exist. The Court of the Committee of Jurists was a Court of Justice; it was not a Court of Arbitration. Nor was it a legislature for the creation of the law which it was to apply. That is the function of an International Conference of The Hague type for the advancement of the Law of Nations."

(d) *Their Inaccuracy*

There are two remarks which seem to be called for by this passage. The first is that the view it expresses is based on a rather serious misinterpretation of the sense of Article 38 of the Statute. Dr Scott says that

" two parties may change the nature of the Court at their pleasure, and have its judges act as diplomats in the negotiation of a dispute without reference to existing law."

The whole point of the text of the Statute is that although the parties may ask the Court to decide a case *ex æquo et bono*, or the Court itself suggest that it should do so, *it is the Court which decides whether or not to adopt such procedure, and if so, how far and in what form.* The difference between this and the meaning conveyed by Dr Scott's sentence quoted above is surely too plain to need emphasis. Instead of the parties turning the Court into an arbitral tribunal and its judges into diplomats at their pleasure, the Court decides whether and to what extent it can and will supplement the deficiencies of international law by considerations of equity. Dr Scott at any rate will surely not argue that the Court should not be entrusted with this power, for he upholds

[1] *Op. cit.*, p. 75.

the doctrine that the Court should be competent to hear *all* disputes referred to it by the parties, and it can hardly do so unless possessing such powers.

(e) *And Inconsistency*

This brings us to the second remark—the inconsistency of the passage quoted with the views Dr Scott expresses elsewhere in the same lecture. Thus on pp. 35 and 36 he quotes with reverent enthusiasm the dicta of Justice Baldwin, who distinguishes political equity, to be judged by the parties themselves, from

"judicial equity administered by a Court of Justice decreeing the *equum et bonum* of the case, let who or what be the parties before them."

Previously (p. 34) Dr Scott himself states that :

"The mere submission to a court divests the political sovereign of the power to decide, and the question becomes judicial although the law be not determined by the submission. The question, having become judicial, is to be decided in ordinary course by judges supposed to be learned in the principles of justice and capable of stating them in the form of rules of law."

Finally Dr Scott commends the prize essay of someone by the name of William Ladd, published in 1840, as prophetic and excellent beyond praise on the subject of what constitutes the nature, powers and duties of an international court.[1] In Paragraph 4 of his proposal William Ladd suggests [2] :

"'All cases submitted to the Court should be judged by the true interpretation of existing treaties and by the laws enacted by the Congress and ratified by the nations represented; and where these treaties and laws fail of establishing the point at issue, they should judge the cause by the principles of equity and justice.'"

(f) *The Reason Why*

There is, it will be seen, a startling lack of consistency in the attitude adopted by Dr Scott. It may be presumed that this lapse, like those previously noted, is due to his desire to prove that the League is a thing of evil cumbering the earth and that nothing it has done in connexion with the Court or elsewhere is of the slightest use to anyone. It is a pity that the guarded violence with which Dr Scott holds this view should make him so untrustworthy on legal issues in any way concerned with the League of Nations, for such issues touch almost every question of importance in international law to-day.

[1] The essay, it must be said, is indeed prophetic, and foreshadows the League of Nations quite as much as the Permanent Court—a point not stressed, curiously enough, by Dr Scott. See his quotations, *op. cit.*, pp. 76-77, from the essay, which bears the significant title of "A Congress of Nations for the Adjustment of International Disputes without Resort to Arms."

[2] Cited by Dr Scott, *ibid.*, p. 77.

PROCEDURE

Language

The languages of the Court are English and French, and the parties may agree to conduct their case in either or both. At the request of the parties the Court may authorize the use (*e.g.* by witnesses or in some other incidental manner) of other languages. Failing an agreement to conduct a case in one of the official languages the Court's decision is given in both, and the Court indicates which of the two texts shall be considered as authoritative.

Institution of Proceedings

Under voluntary jurisdiction the institution of proceedings takes the form of the Court being notified of the terms of the *compromis* or special agreement between the parties setting forth the nature of the dispute. Under compulsory jurisdiction proceedings are instituted by the application of either party. The application must contain a summary of the facts. A request for an advisory opinion is communicated to the Court in the form of a written request from the Assembly or Council, signed by the President or by the Secretary-General acting on the instructions of either body.

Conduct of Proceedings

When proceedings have been instituted the Registrar of the Court informs the members of the League and the states mentioned in the Annex, as well as the members of the Court, including the deputy judges, of the case that has been submitted. The Court has power to indicate what provisional measures ought to be taken to preserve the rights of the parties, who are represented by agents and counsel. The latter appear before the Court in the robes of office traditional in their own country (the members of the English Bar wear the customary wig and gown). The Statute lays down the general lines of the procedure, which consists of the communication to the judges and the parties of written cases, counter cases and, if necessary, replies; also all papers and documents in support, together with the hearing by the Court of witnesses, experts, agents, counsel and advocates. A request for an advisory opinion is treated by the same procedure when it consists of a dispute between two parties. The latter are then represented before the Court and argue their case orally and in writing in precisely the same way. In this case, however, the Court, in addition to notifying the members of the League and

the states mentioned in the Annex of the request, communicates it to any international organizations " likely to be able to furnish information on the question " (Article 73 of the Rules of the Court).[1]

ANNOUNCING A DECISION

The Court delivers a judgment or an advisory opinion publicly and with a full statement of the reasons for which the Court has reached its view. A judgment or advisory opinion is reached by majority, and the minority has the right either simply to state that it dissents or to go further and give the reasons for its dissent.

REVISION

By Article 61 of the Statute a party may apply for revision of a judgment on the ground that a fact has been discovered which is a decisive factor in the case, and was unknown to the Court and the party claiming revision at the time when the judgment was given, without such ignorance being attributable to the neglect of the party. " The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision and declaring the application admissible on this ground." The application for revision must be made not later than six months after the discovery of the new fact and not more than ten years from the date of the sentence. The Court may require previous compliance with the terms of its original judgment before it admits proceedings for revision.

THE COURT AND ARBITRAL TRIBUNALS

THE MEANING OF ARBITRATION IN THE COVENANT

The framers of the Covenant were hazy about the distinction between arbitration and judicial settlement, partly owing to their general " political " attitude and desire to make the Covenant as brief and elastic as possible,[2] partly in deference to the wishes of President Wilson :

" Those who were familiar with the proceedings of the League of Nations Commission of the Peace Conference at Paris know that the word ' arbitration '

[1] Judge Bustamante suggests that either all states should be notified or none, and objects to notifications being limited to members of the League and states mentioned in the Annex to the Covenant. He also objects to the notification of international organizations, which he considers to be beneath the dignity of the Court. He adds that the practice of notification causes delay, which in urgent cases may be serious, and is of no practical use (§ 246 of *The World Court*). It may be observed that whereas requests for opinions from private law associations, etc., would not appear a very useful proceeding, it is surely desirable to allow states who consider they have an interest in the matter to make their views known.

[2] See above, pp. 88, 99, 382.

was used throughout those proceedings in a double and ambiguous sense. It was used to mean both arbitration in the strict technical sense . . . and also to mean recourse to judicial settlement. The fact that no clear distinction between these two meanings was made was due to the determined ' antilegalism ' of President Wilson. The whole of Articles XII.-XIV. were indeed a compromise produced by a conflict of opinion between President Wilson, who was against elaborating the existing legal development of the society of states, and Lord Robert Cecil, who saw in that development one of the most helpful means of ensuring the pacific settlement of international disputes. Lord Robert Cecil secured in substance most of what he wanted, but in form he had to compromise, and in consequence the word ' arbitration ' remained with the double and ambiguous sense which has been described. This ambiguity . . . was removed by the amendments agreed to by the Second Assembly, which in 1924 at length came into force, and which substituted for the word ' arbitration ' the words ' arbitration or judicial settlement.' This change . . . faithfully interprets the intentions of the authors of the Covenant." [1]

The Distinction between Arbitration and Judicial Procedure

Since the Peace Conference it has become customary to establish a sharp distinction between Courts of Law and Arbitral Tribunals and to apply it to the Permanent Court and The Hague Court of Arbitration. This was the view of the Jurists' Committee, which throughout emphasized the judicial character of the Court and the necessity of making the distinction clear between arbitration and the judicial power. M. Bourgeois, in opening the work of the Committee, emphasized the view that the future Permanent International Court " is not to be a Court of Arbitration but a Court of Justice."

That the Committee succeeded in establishing this distinction is the view of most commentators. Thus Mr Fachiri remarks [2]:

" The new Court is fundamentally a court of *justice* administering rules of law, and therefore not necessarily suitable for the settlement of disputes of a political nature in which the parties desire to arrive at a compromise based on political considerations. For this purpose one or more arbitrators chosen by the parties themselves with a view to the particular issues may well be the more appropriate tribunal. In this connexion it may be permissible to observe that the Permanent Court of Arbitration is, essentially, such a tribunal. That institution commands respect for the valuable work it has accomplished, but it must be recognized that it is not a ' Permanent Court ' in any real sense of the term. It consists, in effect, of a list of names, designated by the governments of the signatories of The Hague Convention of 1907, from which, when a dispute is referred to arbitration by the parties, they themselves select the arbitrators. The Permanent Court of International Justice, on the contrary, consists of a

[1] P. J. Baker in an article on " The Obligatory Jurisdiction of the Permanent Court of International Justice," appearing in the *British Yearbook of International Law*, 1925, p. 71.

[2] *Ibid.*, p. 22.

small body of professional judges, forming a determinate and permanent tribunal always in being, and immediately accessible to the parties."

Lord Birkenhead [1] writes :

"The results of the Conferences of 1899 and 1907 mark a great advance in the methods of pacific settlement of international disputes but still leave much to be desired. . . . Certainly there was created a permanent machinery ready to bring a Court of Arbitration into being at any moment, but this did not deserve the title of Permanent Court of Arbitration. . . . The Convention [for a Judicial Arbitration Court] remained a draft because the Conference failed to reach an agreement on the method of appointing judges, and no Permanent Judicial Court was founded, in fact no judicial court of any kind. The only provision for the settlement of disputes was by way of arbitration, which always suffers from one inherent defect when viewed from the standpoint of the development of international law: it tends to be a decision on the merits rather than on the law, a decision which is well adapted to the demands of a particular and momentary situation rather than one which is based on reasons which possess a general value apart from the particular case. Clearly, if systematized methods for the pacific settlement of disputes were to contribute to the advancement of international law from being a branch of law so imperfect, so incomplete, so difficult to transform, there was need for a tribunal that would be both permanent and judicial. The establishment of a permanent world organization —the League of Nations—and the enhanced credit acquired in recent years by arbitration in general and, more particularly, international justice, made possible the creation of the Permanent Court of International Justice."

Similarly Oppenheim [2] points out :

"Valuable as has been, and may continue to be, the Permanent Court of Arbitration at The Hague, it must be pointed out that it is not a real court of justice as that term is ordinarily understood. For, in the first place, it is not itself a deciding tribunal, but only a list of names, out of which the parties in each case select, and thereby constitute the court. Secondly, experience teaches that occasions may occur on which a court of arbitration feels itself free rather to give an award *ex æquo et bono*, which more or less pleases both parties, than to decide the conflict in a judicial manner by simply applying strict legal rules, without any consideration as to whether or not the decision will please either party. Thirdly, since in conflicts to be decided by arbitration the arbitrators are selected by the parties on each occasion, there are in most cases different individuals acting as arbitrators, so that there is no continuity in the administration of justice.

"For these reasons it was long felt that it would be of the greatest value to institute, side by side with the Permanent Court of Arbitration, a real international court of justice, consisting of a number of judges in the technical sense of the term, who are appointed once for all, and would have to act in each case that the parties chose to bring before the court. Such a court would only take the legal aspects of the case into consideration, and would base its decision on purely legal deliberations. It would secure continuity in the administration of international justice, because it would in each case consider itself bound by its former decisions. It would, in time, build up a valuable practice

[1] *Op. cit.*, pp. 172-173.

[2] *Op. cit.*, pp. 43-44.

by deciding innumerable controversies which as yet haunt the theory of International Law."

But occasionally those who hold that there is a sharp distinction between arbitration and judicial procedure apply this view differently as regards the relations of the Permanent Court to The Hague panel of arbiters. Thus, Charles C. Morrison [1] says:

"To speak about 'the substitution of law for war' when referring to The Hague court, the league court or the league of nations, betrays loose thinking, and is the cause of much confusion in public understanding. None of these institutions applies or proposes to apply law as a substitute for war in any such sense as civil courts apply law. Their principle is essentially arbitration—quite another thing. Their two so-called courts are really arbitration tribunals; one honestly calls itself a court of arbitration, the other calls itself a court of justice, but the name over the door does not affect the mode of functioning within. Both function arbitrarily, and under present conditions there is nothing else for them to do. . . . What are the essential features in the structure of a court of law? They are three: a body of judges, a definite code of law, and affirmative jurisdiction. Lacking any one of these, a court is not a court of law, a judicial tribunal. The league court possesses the first but lacks the second and third." [2]

The Belief that this Distinction is exaggerated

On the other hand the belief is frequently expressed, particularly by English and American jurists, that the distinction between arbitration and judicial procedure is unreal, and that the former is simply a less developed form of judicial settlement. Thus Westlake states that "Arbitration . . . is essentially a judicial procedure." [3] Sir Frederick Pollock remarks [4]:

"Before the war there was much academic discussion of the question whether The Hague Tribunal is a real court of justice. . . . The tribunal dealing with each case is a judicial body and bound to act judicially. . . . No one maintains that The Hague Tribunal is a perfect court. To deny that it is a

[1] *Op. cit.*, pp. 136-137 and 144.

[2] Elsewhere (p. 145) Mr Morrison dismisses the compulsory (*i.e.* "affirmative") jurisdiction of the Court under the optional clause on the ground that "the significance of the fact is utterly *nil* in respect to the peace of the world. Not a single Great Power has signed the compulsory jurisdiction clause, and not a single one will do so." Prophecy is proverbially dangerous, and has proved peculiarly unfortunate in Mr Morrison's case, since within a few months of the publication of this statement Germany (in September 1927) announced her adhesion to the optional clause!

[3] *Op. cit.*, vol. i., p. 305.

[4] *League of Nations*, 2nd edition, pp. 59-60. *Cf.* also his remark: "Mr Fachiri seems in one place to tolerate the rather common Continental assumption that an arbitrator as distinct from a regular court of justice is not bound to decide according to law. Certainly we have no such doctrine in England, though the parties who create arbitral jurisdiction may by express agreement confer on him any powers, judicial or extrajudicial, they think fit; they may direct him to decide according to a foreign law and so forth" (*British Yearbook of International Law*, 1926, p. 136).

court of justice at all or that it has done some fairly effectual justice appears to me to be a feat of rather high dialectical courage."

Professor Manley Hudson writes:

"The distinction between the process of arbitration and that of adjudication has been greatly stressed during the period of propaganda for a new court. It proceeds on the notion that arbitration involves compromise, which seems to mean in some minds adding up the claims on both sides of a dispute and dividing the sum by two; while judicial settlement involves merely the application of definite and certain principles without any accommodation between the parties. . . . If compromise involves the splitting of differences, or the bargaining with extraneous matters, it is of course objectionable. In truth, neither international law nor municipal law is a 'brooding omnipresence in the sky.' Both have to be made. Neither is found full-blown. The process in both cases is one of balancing competing interests—more patently so when states are contending parties, as a result of the present condition of international law. Perhaps a sounder distinction could be drawn between arbitration or judicial settlement on the one hand and diplomatic negotiation on the other. There is no inherent quality of lawlessness in arbitration. And whether an international tribunal be called a court of arbitration or a court of justice, it will probably travel along very much the same roads to reach its conclusions. Its task does not differ greatly from that of the United States Supreme Court in interpreting the Constitution." [1]

Judge Bustamante,[2] in discussing the difference between The Hague Arbitral Tribunal and the Permanent Court, brings out the historical connexion between arbitration and judicial procedure, and draws an analogy with these two institutions in the domestic life of a nation. He points out that a court works under rules preceding and superseding the will of the parties and decides in accordance with laws in force or the applicable common law, and gives a legal solution to every question. The Court is not a special creation of all the parties to the suits; "it exists before them and above them, and operates as an authority and a force in relation to every question" as does the law which it applies. On the other hand, in the sphere of arbitration the parties choose and designate the judge or the court that they desire: they may entrust it with

[1] Pp. 12-13 of *The Permanent Court of International Justice*. *Cf.* also his remark in *Current International Co-operation*, pp. 82-83: "I think it is open to serious doubt whether the distinction between arbitration and adjudication was not pressed too far in the decade before the war. If all arbitrators endeavoured to bring the disputant states to acceptable terms without reference to the law applying to their claims, and if all judges engaged in the inexorable application of definite and inescapable law without reference to what may be its practical consequences in the given case, the distinction might be a more important one. There may have been cases in which both of these things happened . . . but in the great majority of cases, arbitrators who are usually lawyers feel themselves bound by the applicable law, if any law is clearly applicable, just as judges feel themselves bound to consider the consequences of the decisions which they reach."

[2] *Op. cit.*, pp. 152-153.

the task of judging in accordance with the general law or in accordance with special rules chosen by them, for example in accordance with equity. In arbitration " everything is voluntary, personal and private."

Applying this analogy to international relations he points out that as

" there is no super-state there cannot yet be a stable and fixed judicial power, set in operation by the will of the majority, and not by the consent of those interested. These interested nations, either for one specific case, or for a certain kind of questions, or for all questions not of a political nature that may arise between two or more of them, agree to submit their disputes or litigations to justice. In other words, the judicial power of the world, compared to that of each nation, has hitherto been determined by national law, and is, both in its origin and development, arbitral in its nature.

" No doubt the existence of a common Court, created and maintained by all, and accepted as compulsory by all or by a large number of them as to certain problems, represents a considerable advance. It may be called the necessary link between arbitration and justice : seen from one side, it resembles arbitration, whence it comes; seen from the other side, it resembles justice, toward which it is going."

The Inevitability of Gradualness

To what extent judicial procedure in international matters should be, or already is, distinct from arbitration will probably remain a matter of dispute. But it hardly seems possible to deny that the former as a matter of historic fact has developed from the latter. International law, as we have seen, is a vague and incomplete affair, still very much law in the making, and therefore not easy to distinguish from its source, international political life. But gradually, with the increasing complexity and frequency of the contacts between nations, international law has come to cover wider fields and grown more precise and more juridical in character. At the same time the methods of handling disputes have become more specialized, and notably arbitration has become clearly distinct from other methods and developed and standardized along increasingly juridical lines. The code of arbitral procedure drawn up by the Institute of International Law in 1875 was a step forward, and The Hague Convention for the Pacific Settlement of Disputes framed in 1899 and improved in 1907 was a further step.

By this Convention arbitration is defined as " the settlement of differences between states by judges of their own choice and on a basis of respect for law." Cases dealt with under this Convention have in fact nearly always been conducted by jurists in a legal

manner, and there has been a certain tendency to use the same arbiters as often as possible.[1]

Nevertheless under The Hague Arbitration Convention there was (1) no continuity in personnel, for a different tribunal was set up *ad hoc* for each case; (2) no uniformity in the law applied, for not only the composition of the tribunal but the procedure it was to observe and the law it was to apply were determined afresh to a greater or less extent in each *compromis*. Thus in the Alabama case, which was hailed as a great triumph for arbitration, the real questions at issue—namely, the duties of neutrals and the rights of belligerents—were previously settled by negotiation at Washington and presented to the tribunal as a rule devised specially for the case. The tribunal was therefore practically reduced to a board for assessing the damages on the basis laid down by the Washington agreement. And finally, (3) although in fact most cases were conducted juridically it was always open to the parties to compose and instruct the tribunal so as to make it a semi-diplomatic body, while in view of the vagueness of international law it was difficult to say where judicial arbitration stopped and political bargaining began.

With the League this process of evolution was hastened. Between members of the League international law has become more coherent and has been given a firm basis, and this development is affecting the international relations of the few non-members. The League has still further developed and specialized machinery for the peaceful settlement of disputes, as well as obliged most of the civilized world to resort to such machinery and provided the means for adapting and extending international law to fit the needs of the modern world. The Permanent Court set up by the League provides continuity of personnel and the concentration of legal authority. One of the most important distinctions between the Court and arbitral tribunals is that whereas the latter are many and ephemeral the Court is single and permanent.

The jurisdiction and procedure of the Court are uniform and laid down by the Statute for all cases coming before it, and its

[1] Professor Hudson, in his book on *The Permanent Court* (pp. 11-12), points out that in 17 cases before tribunals formed from The Hague panel only 24 arbiters were employed out of a total of 135: two arbiters acted five times; one, four times; and three, three times. On the whole subject of the development of arbitration and its increasingly judicial character see P. J. Baker's article on "The Jurisdiction of the Permanent Court," already quoted (*British Yearbook of International Law*, 1925, pp. 77-78), and the article, "On the Juridical Basis of Arbitration," by R. Y. Hedges in the 1926 number of the *Yearbook*.

compulsory jurisdiction is steadily widening. The submission of disputes by special agreement is always possible, but the parties cannot without the consent of the Court affect the law it administers or the procedure it follows, and the general lines of both are fixed even for the Court by the provisions of the Statute.

We are obviously still far from the day of the universal compulsory jurisdiction of the Court, while the development and clarification of international law have barely begun. But we have already come a long way; and just as within states the evolution can be traced by imperceptible stages from the first rude beginnings of organized justice to our present highly developed legal system, so mankind has made long strides toward the ideal of a world court with compulsory jurisdiction administering a real world law, and the path to further advance is clearly marked out ahead—it lies through the development of the League and the laws of peace and strengthening the authority of the Court.

The Permanent Court of International Justice and The Hague Court of Arbitration

The question is often asked, what is the relation of the Permanent Court to the so-called Hague Court of Arbitration? Most of this question has been answered in the discussion on arbitration and judicial settlement. It may be added that the panel of arbiters composing The Hague tribunal or national groups formed in a similar manner are responsible for nominating candidates for election to the Permanent Court, and the Carnegie Peace Palace is shared by the Permanent Court and the Central Office of The Hague Court of Arbitration. The Statute provides that the Permanent Court "shall be in addition to the Court of Arbitration organized by The Hague Conventions of 1899 and 1907 and to the special tribunals of arbitration to which states are always at liberty to submit their disputes for settlement." That is, states which, for one reason or another, may prefer to submit a dispute to tribunals whose composition, procedure and jurisdiction they can themselves determine within wide limits may continue to utilize The Hague Court of Arbitration. The United States in any case still prefers to do so since it refuses to recognize the Permanent Court.[1]

[1] But the dilatory procedure, expense and unsatisfactory decision of the Arbitration Tribunal appointed under The Hague Convention to give a decision on the dispute between the United States and Norway after the war made The Hague Court unpopular in the States and gave a fillip to the movement for adhering to the Statute of the Permanent Court.

Most other states, however, are showing a tendency, as arbitration conventions concluded before the war expire, to renew them with the substitution of the Permanent Court for The Hague Court of Arbitration, while post-war conventions almost without exception refer either to the Permanent Court or to arbitration tribunals constituted *ad hoc* by the parties and do not mention The Hague Court of Arbitration.

THE COURT AND THE COMPETENCE OF ARBITRAL TRIBUNALS

In this connexion a problem arises that has already caused considerable practical difficulty. On the one hand arbitral tribunals are by definition to give a final and binding award. On the other their powers are derived solely from the terms of the *compromis* or special agreement concluded between the parties. Sometimes this *compromis* specifically empowers the arbitral tribunal to settle its own jurisdiction in contested cases, and there is a growing tradition that even in the absence of such a clause the tribunal should be the judge of its jurisdiction. But this is by no means a universally recognized tradition, and there have been some famous cases in the past where countries, including the United States, have refused to accept the award of an arbitral tribunal on the ground that it had exceeded its jurisdiction as laid down in the *compromis*. It is obviously highly unsatisfactory that the parties should be judges of whether or not the tribunal to which they refer a dispute exceeds its jurisdiction, and it is therefore being increasingly urged that either arbitral agreements should definitely empower the tribunal to settle its own jurisdiction or provide for appeal to the Permanent Court on this point. This issue played a big part in the dispute between Hungary and Roumania over Hungarian optants,[1] when the Roumanians contended that the Mixed Arbitral Tribunal had exceeded its jurisdiction and refused to agree to the Council asking the Court for an advisory opinion on the point. In another connexion—the Salamis case, described in Volume II. and referred to below [2]—the Council has laid down the doctrine that it cannot entertain a request for an advisory opinion from the Court on a dispute before an arbitral tribunal unless the request is made by both parties, since otherwise there might be a grave danger of undermining the authority of arbitral tribunals. This is obviously a strong point, but does not meet the necessity for some procedure by which the authority of the Court can be appealed to when the jurisdiction of an arbitral tribunal is contested.

[1] See Volume II.

[2] Pp. 473-474.

THE PERMANENT COURT AND THE LEAGUE OF NATIONS

The Legal Connexion

What has been said already makes it unnecessary to consider in detail the relation of the Court to the League. Mr Fachiri expresses a very general view as follows:

"The comparison [made by the Jurists' Committee that drafted the Statute between the executive, legislative and judicial powers within a state and the Assembly, Council and Permanent Court] is ingenious and may have proved useful as suggesting the solution of the problem of the election of the judges, but it cannot be pressed too far or treated as accurately representing the actual position. Within the State, no matter how strictly the principle of judicial independence is safeguarded, there is always an ultimate power in the sovereign authority to remove judges. That power is not possessed by the League of Nations in regard to the Court. Again, the legislature enacts laws which are binding upon its national tribunals, but the Assembly of the League has no such power in regard to the international Court. Finally, the sovereign power in the State, which created its Courts, can alter their nature and functions or abolish them altogether, whereas the League of Nations has no power whatever to modify the Statute of the Permanent Court of International Justice. In fact it may fairly be said that, except for the election of the judges, the Court could exist and function as an international institution if the League disappeared, and in this connexion it should be remembered that the Statute of the Court, which alone gives it legal existence and determines its powers, was brought into operation by the direct act of the individual signatories. As regards the election of judges, the organic existence of the League is only necessary in so far as an Assembly and a Council must be in being at the date of the election. There would not indeed appear to be any reason why a State (*e.g.* the United States) which is not a Member of the League should not appoint representatives *ad hoc* to sit in each body for the sole purpose of the election of judges. If such a course were contemplated it is submitted that it could be put into execution without the necessity of amending either the Covenant or the Statute of the Court."[1]

This is an admirable summary of the *legal* connexion, which, however, is incomplete on one point and perhaps incorrect on another: it omits to state that the number of judges and deputy judges may by Article 3 of the Statute be increased by the Assembly, upon the proposal of the Council, to a total of fifteen judges and six deputies. It also does not mention that only States Members of the League or mentioned in the Annex to the Covenant may sign the Statute or nominate candidates for election to the Court, and are the only states which the Court notifies in the institution of proceedings or requests for an advisory opinion. Access of other states to the Court is permissible only on conditions

[1] *Op. cit.*, pp. 219-220.

laid down by the Council, although such conditions must not place the parties in a position of inequality before the Court.

The point on which the summary quoted would appear incorrect is the suggestion that states not members of the League could vote in the Assembly and Council for the purpose of electing judges, without an amendment to the Covenant. This theory arose and had a certain vogue at the time United States public opinion was discussing the question of adhering to the Statute and taking part in the election of judges. The Assembly and Council are composed of members of the League, and members of the League only. Article III. of the Covenant explicitly states that "The Assembly shall consist of representatives of the members of the League." Although the United States is mentioned in Article IV. as an original member of the Council it is clear from the rest of the article and the circumstances in which it was framed that its members too are supposed to be representatives of members of the League, with the sole exception that a state non-member may be invited to sit on the Council or the Assembly under Article XVII. of the Covenant if either body is dealing with a dispute in which it is involved. It may be desirable to amend the Covenant so as to allow non-member states to be associated with the League by sitting and voting on the Assembly and Council for such purposes and on such terms as may be agreed upon between them and a majority of the members of either body.[1] But it can scarcely be denied that it would require an amendment of the Covenant to enable non-members to sit and vote for any purpose other than for disputes under Article XVII.

One effect of the League on international law, it will be remembered, has been to base it on an organized society of nations which is prepared to see that the law is not flouted, at least by the aggravated form of defiance known as resort to war in violation of treaty obligations, and is pledged to coerce into peace a state which violates this agreement. Accordingly if a party to a dispute resorts to war against the other party when the latter has accepted the decision of the Court, or before the lapse of three months after rendering the decision, it incurs the "sanctions" of Article XVI. of the Covenant, provided the state against which the party resorts to war is a member of the League or a non-member state that has accepted the obligations of membership for the purposes of the dispute under Article XVII. of the Covenant (including, it may be

[1] See the chapters in Volume III. on "The United States" and "The Union of Socialist Soviet Republics," and also the discussion in *The League, The Protocol, and the Empire*, by Roth Williams, pp. 129-130.

presumed, the acceptance of the terms laid down by the Council for access to the Court of states non-members of the League and not mentioned in the Annex to the Covenant).

That is, resort to war in these circumstances is a violation of Article XIII. of the Covenant of the kind mentioned in Article XVI. But Article XIII. further states that in the event of any failure to carry out an arbitral award or judicial settlement (*i.e.* in this case a judgment of the Court) " the Council shall propose what steps should be taken to give effect thereto." The Council no doubt would be free under this sentence to propose measures of coercion, but there is no obligation on members of the Council to make such a proposal or on the other members of the League to entertain it if made. It is most unlikely that the Council would ever do more than attempt to apply moral and diplomatic pressure under this article.

In short, the position as regards execution of judgments of states not members of the League and not mentioned in the Annex to the Covenant which have accepted the conditions laid down by the Council for access to the Court is the same as that of members of the League. Both can summon a defaulting party before the Council or be summoned if themselves in default, either as regards mere failure to carry out a judgment (Article XIII. of the Covenant), or for resort to war in defiance of a judgment (Article XVI.).

On the other hand, states mentioned in the Annex to the Covenant but not members of the League may adhere to the Statute directly (although, if they wish to take part in the election of judges, they will have to conclude an agreement with the members of the League, probably involving an amendment to the Covenant, as explained above, p. 421). In this case they might, theoretically, be requested by another signatory, which was a member of the League or had accepted the conditions laid down by the Council, to appear before that body on a charge of failing to carry out a judgment or of resorting to war in defiance of a judgment, with the resulting consequences under Articles XIII. and XVI. of the Covenant, without possessing the reciprocal right to do likewise. But they could easily acquire this right whenever they wished by a suitable declaration under Article XVII. of the Covenant, or they could simply refuse to acknowledge the Council's jurisdiction. In the former case they would be in the same position as members of the League ; in the latter in the same position that they are now, for at the present moment non-member states may

theoretically be the object of proposals by the Council under Article XIII. if they fail to carry out an arbitral award or a judgment in a dispute with a member of the League or a state accepting the obligations of the Covenant under Article XVII., and are liable to "sanctions" under Article XVI. in case of resort to war in defiance of such an award or judgment—all this without the right to invoke the protection of the League if the rôles are reversed.

THE POLITICAL BOND

(a) *In the Settlement of Disputes*

But the closely circumscribed legal connexion described above hardly brings out the real strength of the bonds between the League and the Court. As Mr Fachiri himself says:

"There can be no question that but for the existence of the League the Court could not have been created. Moreover, the international system inaugurated by the Covenant has a most important bearing upon the Court's activities and great value in rendering them effective." [1]

The Covenant

"binds the Members of the League to have recourse to a procedure of settlement which in the ordinary course of things will generally bring them before the Court." [2]

Faced with the alternative of submitting a dispute to arbitration or judicial settlement on the one hand or the Council on the other, coupled with the description of justiciable disputes given in Article XIII. of the Covenant, and the recognition that such questions are generally suitable for submission to arbitration or judicial settlement,

"it appears unlikely that a state would, except in very special circumstances, prefer to force resort to the Council in the case of a dispute really legal in character. In other words, where the dispute is of the kind properly within the Court's domain as a judicial tribunal it will in the ordinary course of things be brought before it under Article XIII." [3]

And even if it is instead brought before the Council (as can be done by either party, whereas the agreement of both is required to bring it before the Court—if the compulsory jurisdiction of the latter is not recognized), the Council, as has been shown above, has the right to ask the Court for an advisory opinion, and as the Council always accepts the Court's opinion, this comes close to a judicial settlement of the issue. (Although technically under the Covenant neither party is bound to accept the unanimous —excluding the parties—report of the Council, if one party does accept it the other cannot resort to war against it without incurring the "sanctions.")

[1] *Op. cit.*, p. 220. [2] P. 62. [3] P. 65.

On this subject M. Politis [1] remarks :

" In an inorganic international community the movement towards compulsory arbitration could before 1914 be only a mere aspiration. It was a piecemeal and limited tendency, surrounded by restrictions, to attain justice as a means of securing peace. It was thought that justice would bring peace because it was believed capable of killing war, but history shows that it is rather the contrary that is true: justice presupposes peace. In an atmosphere saturated by rivalries, passions and the spirit of war, judges are impotent, for the law which is their weapon loses its virtue in the presence of force. On the contrary, in an international community which is beginning to be organized, compulsory arbitration becomes a reality and a system. It approximates more closely to true justice, for it finds the necessary foundations on which it can develop. Its progress proceeds at an increasing pace, which would be astonishing did we not know that it is like a sap which has been accumulated but kept dormant through many generations and is now rising under the life-giving influence of the attempt at organization embodied in the establishment of the League of Nations and the Permanent Court of International Justice."

(b) *In Constitutional Matters*

Both Mr Fachiri and M. Politis are thinking primarily of the Court as part of the system for the peaceful settlement of disputes and preservation of peace set up by the League. But the influence of the existence of the League is even more " organic " and far-reaching. Take, for instance, the points mentioned in Mr Fachiri's analysis of the legal connexion between the Court and the League : " The sovereign authority within a state," he says, " has always an ultimate power to remove judges, whereas the judges on the Court are irremovable." This is true, and is a guarantee of their judicial independence. But their term of office is only nine years, after which they may be re-elected by the Assembly and Council or new judges chosen, or both procedures resorted to—that is, the League cannot remove individual judges, but it is responsible for the general composition of the Bench and gives effect to this responsibility once every nine years.

Again, he says : " The legislature enacts laws which are binding upon its national tribunals, but the Assembly of the League has no such power in regard to the international court." But the States Members of the League, acting sometimes in the Assembly and sometimes in special conferences or in the Conference of the International Labour Organization, are continually drawing up new multilateral conventions which fix the law between the signatories, including in not a few cases non-League states, and indirectly, through their influence on custom, help to change the law even as regards the few non-signatories.

[1] *Nouvelles Tendances du Droit International*, pp. 150-151.

Thirdly, whereas the sovereign power in the state, says Mr Fachiri, which created its courts can alter or abolish them altogether, the League has no power whatever to modify the Statute of the Permanent Court. This can be done only by the signatories. Now, in the first place, the only non-members of the League which can sign the Statute are the United States, Hedjaz and Ecuador, and there is not the slightest reason to believe that any of the three will sign it unless and until they are willing to establish some kind of relationship with the rest of the world as organized in the League. In the second place, it follows that the only signatories are members of the League,[1] who if they wished to revise the Statute could do so through the body which drafted it—namely, the Assembly. It was the Council of the League that invited the United States to a conference of the signatories to discuss the American reservations, and the conference was simply a selection of Assembly delegates meeting at Geneva a few days before the opening of the session of the Assembly.

Nevertheless, only a mixture of ignorance and ill-will can account for the statement reiterated in, *e.g.*, Frances Kellor's and Antonia Hatvany's *The United States Senate and the International Court*, that the League is responsible for the "general policy of the Court." The Court has only one policy, and that is to administer international law as directed by its Statute. The United States, once they sign the Statute and conclude an agreement with the members of the League to participate in payment of the budget and in the Assembly's and Council's election of judges, enlargement of the Court and requests for advisory opinions, will have exactly the same position and influence in all matters concerning the Court as the members of the League. For the United States to adhere to the Statute it is not *legally* necessary to accept commitments beyond those laid down in the Statute and in their agreement with the members of the League concerning the budget, elections and advisory opinions. But what would appear *psychologically* necessary is for American public opinion to recognize that the League is a fact, that practically the whole civilized world are members of the League, that in their view the Court is an integral part of the general system of peace and co-operation set up through the League, and that consequently adherence to the Court in the eyes of the civilized world would be an earnest of wider and more regular co-operation of the United States in the great task of securing world peace to which mankind has set its hand after the

[1] Since June 1928 Brazil is a state mentioned in the Annex to the Covenant but not a member of the League, although a signatory.

greatest of all wars. The United States would of course be free to fulfil or disappoint this expectation as they chose. But anyone in or out of America who pretends that it is possible to adhere to the Court while ignoring the League, or that the rest of the world could or would sever the connexion of the Court with the League, or start a new Court for the sake of Uncle Sam's *beaux yeux*, is at best engaged in make-believe and at worst sabotaging peace for the sake of base political intrigues and vendettas.

This brings us to the final statement that "except for the election of the judges the Court could exist and function as an international institution if the League disappeared." The exception, it may be remarked in passing, would appear to be of some importance, for, as Dr Scott points out, "A court without judges is very like an empty throne in a deserted palace." [1]

But this is a detail. The real question, and it goes to the root of the matter, is, could the Court, as a matter of fact and not of legal fiction, exist without the League?

THE COMMON PSYCHOLOGICAL BASIS

(a) *Judge Bustamante's Views*

This question goes so deep that, before attempting a direct answer, it will be well to examine it in the indirect light cast upon it by Judge Bustamante—himself a member of the Court—when discussing certain points of the Court's constitution. Judge Bustamante protests against the power retained by the Council under Paragraph 4 of its resolution laying down the terms of access to the Court by states non-members of the League and not mentioned in the Annex to the Covenant to rescind or amend the resolution. This provision, he writes,

> "does not deserve favourable criticism. A body exercising a political function reserves to itself the right to close access to the Court and to put out of court countries that have made the required declaration and that the Court has already admitted. . . . No nation will come to discuss its problems before the Permanent Court if it comes within this group and if the Council of the League of Nations has the right to block its path and deny it justice. The declaration required from a nation ought not to be subject to revocation at the will of a third party, and access to the Court ought not to depend for any nation on what might suit the interest or the convenience in any given political situation of the reduced nucleus of the nations that forms the Council of the League." [2]

In form this objection is levied only against the power of the Council to rescind its resolution and thereby to render ineffective existing declarations of states acceding to the Court under this resolution, except in regard to disputes already before the Court.

[1] See above, p. 366.

[2] *Op. cit.*, § 188, p. 202.

In reality—this is particularly clear in the last sentence—the protest is made against the corresponding provision in the Statute, for it is obvious that if the Council has the right to lay down the terms for access to the Court, subject to the provision that parties before the Court shall be in a position of equality, the right must include the power to alter these terms if the Council sees fit. Under the Statute, as has been pointed out above,[1] the Council has the right if it wishes to lay down terms for each state in this category each time it desires to come before the Court. It preferred to exercise this right by laying down general terms to apply to all applicants for all cases, but in so doing naturally reserved the right to change the terms if it saw fit. Judge Bustamante evidently felt some compunction about directly attacking the Statute of the Court to which he had accepted election, and so preferred this somewhat roundabout way of criticizing its provisions. Elsewhere in his book he protests against the fact that only members of the League and states mentioned in the Annex to the Covenant can become signatories to the Statute or nominate candidates for election to the Court. As we shall see below, he suggests making the Court financially independent of the League.

(b) *A Critique of these Views*

The idea behind all these views is that the Court should have direct relations with the whole community of nations in the fictitious pre-war sense, and that the League is a more or less irrelevant side-show, the midwife that assisted at the Court's birth, but not its mother to whom it owes any filial piety, let alone acknowledging a social bond.

This view ignores the facts that: (*a*) the pre-war community of nations, just because it was fictitious, proved organically incapable of setting up a court; (*b*) the overwhelming majority of that community has since profited from the lesson of the war to form itself into an organized society of nations; (*c*) it is this organized society and not the fictitious community which sets up and maintains the Court, brings it business and acknowledges its jurisdiction; (*d*) the only states of any importance not in this organized society are the United States, the Soviet Union, Turkey and Mexico.[2] These states cannot possibly form another court with each other or with the members of the League, and the very attitude which has kept them out of world co-operation makes them unwilling to trust to anything but their strong right arm

[1] See pp. 380-381.

[2] Brazil, while for the time being no longer a member of the League, is a party to the Statute of the Court.

for the settlement of their differences with other nations. It is a melancholy fact that the United States, which before the war were the leaders in the movement for arbitration and judicial settlement, are now amongst the most backward nations, and must be classed in this respect with Turkey, the Soviet Union and Mexico. And these states are not in the least likely to wish to take part in recognizing and maintaining the Permanent Court except when they are willing to co-operate, at least to some extent, with the rest of the civilized world organized in the League.[1]

In the light of these facts it seemed natural to the members of the League when setting up the Court to regard non-membership as something exceptional, and, while allowing access to the Court unconditionally to states which in the Annex to the Covenant figure as original members and failed to become so entirely by their own will, to lay down conditions for other states non-members, and to set the Council, as the executive organ of the League, to watch over the execution of these conditions. From this point of view the Court is in fact the Court of the League, and also a world court, because the League is a world league; it is the judicial organ of the organized community of nations. An unorganized community of nations is by definition incapable of having a judicial organ, for judicial organization resting on political anarchy is a contradiction in terms, an impracticable notion not even attractive as an ideal.

(c) *The Cash Nexus*

Another proposal made by Judge Bustamante[2] is that the Court should be endowed.

> " When the Court owns its own funds, has its own private fortune, so to speak, administered either by the Court or by an international board of trustees, it will have infinitely more authority and its future will be much more secure." [3]

[1] The United States in fact had co-operated with other nations through the League to an increasing extent for some years before proposing to adhere to the Statute of the Court. A valiant attempt was made to present the campaign for adherence as something quite unconnected with the question of America's relationship to the League, but the more honest both of the opponents and advocates of this course recognized that it did mean some form of association or established relationship. In the second of its five reservations the United States very properly requested that it should be " permitted to participate through representatives designated for the purpose and upon an equality with the other States Members respectively of the Council and Assembly of the League of Nations in any and all proceedings of either the Council or Assembly for the election of judges or deputy judges of the Permanent Court of International Justice or for the filling of vacancies." This would probably—as explained above (p. 421)—have necessitated an amendment to the Covenant and certainly required the consent of the members of the League as embodied in a resolution of the Assembly or Council, or some document registering an agreement between the members of the League and the United States.

[2] *Op. cit.*, §§ 168, 169.

[3] *Op. cit.*, pp. 176-177.

The necessary money might be secured by large personal gifts made possible by:

"The very great increase of private fortunes in certain countries since 1900. . . . One American philanthropist alone built the palace at Cartago for the Central American Court of Justice, and gave a large sum towards the construction of the Palace of Peace at The Hague, where the Permanent Court of Arbitration and the Permanent Court of International Justice both have their seats. Others will no doubt emulate or imitate him." [1]

The League owns property and has funds of its own, so why not also the Court? The present arrangement gives the Court a strangely insecure and precarious financial situation.

"Two radically different institutions are financially joined—the League of Nations, essentially a diplomatic and political organ, in spite of its varied functions in other fields, and the Permanent Court of International Justice, essentially a judicial organ. Any tempest that beats down on the League will inevitably react on the Court. Suppose another general war were to break out in Europe lasting for several years, and ending with a new peace treaty, which, by the familiar hazard of conflict, might not be influenced by the same considerations that ruled the Paris Peace Conference; all the tremendous progress implied in world-wide justice might vanish, carried down by the destruction of another institution, more easy to overwhelm, but perhaps not less lamentable." [2]

(d) *Comments*

The first remark to be made on this suggestion is that although the financing of the Court by an American millionaire might seem a proper method of increasing its moral authority in American or Cuban eyes, the rest of the world is hardly likely to think that the Court's standing would be improved if people slipped into the habit of referring to it as, shall we say, the "Rockefeller Court." The second remark is that if there were a new general war lasting several years and destroying the League, the judges, providing they drew their endowed salary in currency that remained unaffected by these untoward events and no one dropped bombs on The Hague, would no doubt be in a better financial position than other unemployed, but the Court would no longer exist as an institution.

But these are details, chiefly interesting as illustrating a certain engaging *naïveté*. The idea at the back of all these assertions is that the League is somehow a piece of machinery set up by but distinct from the governments, "a diplomatic and political organ," just as the Permanent Court is a piece of machinery known as a judicial organ. This indeed is the root error, which

[1] *Op. cit.*, pp. 176-177. [2] *Op. cit.*, p. 174, § 166.

accounts for the way, for instance, in which American opinion advocating international action either for the setting up of a court or in some other direction blandly ignores the League and thinks it can deal with the other states of the world as though the League did not exist. But the League is not just a piece of machinery set up by governments: it *is* the governments themselves, nearly all the governments in the world, organized on the basis of solemn treaty obligations for the conduct of their mutual affairs. If these governments set up a joint conciliation commission for dealing with political disputes it would be equivalent to the Court as a judicial organ. Again, the Court is independent of the legislative and executive organs of the League—namely, the Assembly and the Council—just as the Supreme Court of the United States is independent of Congress and the Administration. But to suggest that the Court is or can be independent of the League of Nations is just as meaningless as to contend for the independence of the Supreme Court from the United States. Does anyone suggest that the Supreme Court should be supported by an American millionaire and not from the budget of the United States? Or would anyone seriously advance the view that if a fresh civil war broke out in the States devastating enough to break up the Union, such an arrangement would enable the Supreme Court to survive the destruction of that other "institution" or "political organ" known as the United States? Judge Bustamante's suggestion is at bottom just as silly and politically illiterate as this, but it represents a very general view based on complete failure to understand what it is that has been happening to the world in the last eight years.

THE DIRECT ANSWER

These preliminary considerations clear the way for a direct answer to the question of whether the Court could survive if the League were to disappear. But it must be realized that the answer can be only indicated, for the full reply is contained in every page of this book and the two volumes that are to follow. It goes even deeper than that, for in the last analysis the answer depends on the vision one has of the world in which we live and the kind of civilization towards which we are moving. To the present writer judicial procedure and organization appear as an essential but limited part of the movement towards an organized world society of which the League of Nations is the first expression. Anything further must proceed from this; but even already so much has been achieved that attempts to equate the Court and the League

sound like setting up the part against the whole, as a proposal to a man building a house that he should take out the fireplace and set it up in the open as a sufficient guarantee of warmth and shelter.

Of course the Court cannot exist without the League. It was the League that set up the Court. It is the League that maintains it and the members of the League that bring it business as part of the system of peaceful settlement of disputes and outlawry of war to which they are pledged under the Covenant. It is the League which is making most of the new international law which the Court administers. The forces making for world unity based on peace and co-operation, that have brought together nearly all the civilized nations in the League, have by the same token established the Court as the judicial organ of the nascent world polity. The forces of nationalist intransigence and militarism that might break up the League would in the same motion lay the Court in ruins. A world court became possible only when it was established, and will be possible only so long as maintained, by a world political organization, whose existence alone is welding the pulpy beginnings of international jurisprudence into a solid body of law and fashioning it into the steel frame and concrete foundations of a world polity.

CHAPTER XI

THE FINANCES OF THE LEAGUE

THE contrast between the League's finances to-day and in 1920 is the story of how a struggling experiment has in a few years become a world-wide solidly established and smoothly running organization. During its first months of existence the League had no permanent quarters—for it was touch-and-go whether Switzerland would become a member—was provisionally housed in London, and lived precariously on overdrafts from the bank and advances from the British and French governments. At one time things reached such a pitch that the Secretary-General and one or two other high officials secretly pooled their month's salary to pay the salaries of the exiguous lower staff. By 1928 the League owned buildings, land, and other property worth 10,000,000 francs, had a 5,000,000 franc working capital fund, a building fund of nearly 20,000,000 francs, and an annual budget of around 25,000,000 francs. What is more, the budget is promptly paid on a scale devised by, and acceptable to, all the members of the League, whereas in the first years there was endless difficulty about payment—indeed it was freely predicted that the League would die of inanition for this reason.

THE ALLOCATION OF EXPENSES

The early difficulties about payment were due largely to the fact that the scale fixed in the Covenant was obviously inappropriate. Small thought had been given to this subject at the Peace Conference, and the scale adopted was simply taken from that employed by the Universal Postal Union and used as a model by most international organizations that came into existence after the establishment of the Union. The Universal Postal Union, in its turn, had taken over the system invented in the International Telegraphic Convention of 1868, which is thus the pioneer for the allocation of permanent intergovernmental expenditure.

THE UNIVERSAL POSTAL UNION SCALE

The Postal Union scale provides that the member states should be classed according to their capacity to pay in seven classes, of which the first pay twenty-five units, the second twenty units, and so on, the last class paying one unit. In order to determine the

proportion of the expenses payable under this system by a member state a total is obtained by adding together the unit ratings of all the members. Then the ratio which a given state's rating bears to the total number of units determines the proportion of the expenses which that state shall pay. If, for instance, state *x* is rated at ten units and the total number of units of all the member states added together amounts to one hundred, state *x* pays one-tenth of the budget; a state rated at five units pays one-twentieth, and so forth.

DIFFICULTIES IN APPLYING THIS SCALE

When it came to applying this system to the League budget it was found that the Postal Union scale did not allow of nearly enough difference between states. For instance, whereas Great Britain had to pay only twenty-five times as much as Liberia (Great Britain being assessed at the maximum of twenty-five points and Liberia the minimum of one) the revenue of Great Britain was at least four thousand two hundred and fifty times that of Liberia. Furthermore, since the expenses of the Universal Postal Union were too trivial to make any difference to the states concerned, it had become fashionable for states to get themselves put into a higher class than was really theirs (the basis of classification being population, extent of territory, and importance of the postal traffic of the state concerned) for reasons of prestige and dignity. Thus Australia, India, Canada and South Africa, as well as China, were all in the first class with Great Britain, France, etc. When it came to paying their share of the League budget these states objected that the allocation was unfair and inflicted undue hardship on themselves. For some years this subject was discussed at every Assembly, and pondered over by standing committees throughout the year between the assemblies. An attempt was made first of all to get the Universal Postal Union to change its scale, but it was found that this meant ratification of a new agreement by a two-thirds majority of the eighty-one states and administrations members of the Union, involving a delay of from eighteen months to two years. In any case it seemed unfortunate from the point of view of the League's own dignity and independence that its budget arrangements should depend upon a minor organization.

THE REVISED SCALE

Consequently an amendment was drafted to the Covenant giving the Assembly itself the power to decide on the way the budget should be allocated, and pending its ratification (which occurred in 1925) a " gentlemen's agreement " was made and

adhered to by the members of the League regarding the allocation. This agreement was amended two or three times in the light of experience, and finally a scale was reached in September 1925, which it was agreed to leave unaltered for three years. According to this scale the maximum is one hundred and five and the minimum one. The basis for calculating a state's ability to pay (the idea of grouping states in classes was given up as repugnant to the dignity of the governments, who preferred to be mentioned alphabetically) was revenue and population, with the corrective that the populations of India and China should not count for more than the population of the most populous European member (which at the time the scale was fixed was Great Britain, but is now Germany), and that the countries which had suffered from invasion during the war should have their assessment correspondingly reduced for some years. Japan was likewise granted a temporary reduction of twelve points as a mark of sympathy for the great national disaster occasioned by the earthquake in 1924. When Germany came into the League she was assessed at the same amount as France, after a rather amusing dispute behind the scenes, when French *amour propre*, which objected to Germany paying more than France, struggled with the natural desire, common to all the members of the League, to pay as small a share of the total as possible. The sums payable by the members of the League in 1928, on the allocation adopted in September 1925 for three years, is given as follows in a memorandum by the Secretary-General (C.526. M.184. 1927.X) communicated to the December 1927 meeting of the Council:

ALLOCATION OF THE EXPENSES FOR THE TENTH FINANCIAL PERIOD (1928)

MEMORANDUM BY THE SECRETARY-GENERAL

SUBJECT to the observation made in the note at the foot of the Annex to this document, the number of units of allocation is the same in 1928 as in 1927.

The Budget for 1928, as approved by the Assembly on September 27, 1927, amounts to 25,333,817 gold francs. On the proposal of the Supervisory Commission, however, the Assembly decided that, out of a total surplus for the financial year 1926 of 1,590,471.47 gold francs, 873,626.25 gold francs should be refunded by means of a reduction of the sum to be collected from the Members of the League in respect of the financial year 1928; the net sum to be apportioned amongst the Members of the League is therefore 24,460,190.75 gold francs.

Furthermore, on the proposal of the Supervisory Commission, the Assembly decided again to take the sum of 1,400,000 francs from the Building Fund and to reimburse it in 1928, in the proportion approved by the Assembly at its seventh ordinary session, to those states which, by the prompt payment of their

share of the League's expenditure up to the end of 1925, had contributed to the formation of the capital set apart for the construction of the new buildings. The amount to be refunded to the Members will, in accordance with a decision of the Assembly, be deducted from the amount of their contribution for 1928.

The gross and the net amounts of the contribution of each Member of the League are shown in the annexed schedule (see pp. 436-437).

ADOPTION OF THE BUDGET

On the whole the first condition for a satisfactory financing of the League is therefore being fulfilled—namely, that the States Members should have a clear understanding of the way in which expenses are divided and should be satisfied that the present allocation is fair. The second necessary pre-requisite is that they should have confidence in the way the budget is prepared and administered. In this respect, too, a complete and elaborate system has gradually been evolved from the expeditious but somewhat happy-go-lucky methods of early days, to the present rigid and complex code, bristling with forms, formalities, checks, scrutinies, controls, counter-controls and safeguards, that make the budget of the League probably the most rigorously economical budget in the world. The machinery and procedure in preparing the budget are as follows.

Drawing up the Draft Budget

The draft budget is drawn up in the different sections in February and March. The Directors of these sections thereupon engage the Secretary-General, flanked by the Treasurer, in April in a long and close-fought battle. The draft budget as it emerges from this preliminary combat is then haled before the Supervisory Commission, a body of five persons, of whom at least one must be a financial expert, in May.

The Supervisory Commission

The Supervisory Commission is appointed by the Council, and has the sole function of scrutinizing the draft budget from the point of view of compressing it within the narrowest possible limits. Its original members have been continually reappointed by the Council, which helps to explain its usurpation of functions it was never intended to perform.[1]

The budget is drawn up in three parts :

1. The Secretariat, subsidiary organizations, the Council and the Assembly.
2. The International Labour Organization, and
3. The International Court.

[1] See below, p. 447.

ANNEX

States	*Units*	*Allocation of Budget* less *surplus*		*Building Fund Annuity Deduction*		*Net Amount of Contributions*	
		Gold Francs	Dollars	Gold Francs	Dollars	Gold Francs	Dollars
1. Abyssinia	2	49.622,23	9.574,73	936,90	180,78	48.685,33	9.393,99
2. Albania	1	24.811,11	4.787,39	1.789,40	345,27	23.021,71	4.442,12
3. Argentine	29	719.522,30	138.834,23	52.512,35	10.132,43	667.009,95	128.701,80
4. Australia	27	669.900,07	129.259,46	55.124,33	10.636,42	614.775,74	118.623,04
5. Austria	8	198.488,92	38.299,10	1.597,04	308,15	196.891,88	37.990,95
6. Belgium	18	446.600,06	86.172,98	32.494,11	6.269,85	414.105,95	79.903,13
7. Bolivia	4	99.244,46	19.149,55	—	—	99.244,46	19.149,55
8. Brazil [1]	13·07377	310.666,84	59.944,20	51.380,71	9.914,08	259.286,13	50.030,12
9. Bulgaria	5	124.055,57	23.936,94	10.967,96	2.116,30	113.087,61	21.820,64
10. Canada	35	868.388,99	167.558,55	63.835,60	12.317,29	804.553,39	155.241,26
11. Chile	14	347.355,60	67.023,42	20.510,64	3.957,60	326.844,96	63.065,82
12. China	46	1.141.311,24	220.219,81	—	—	1.141.311,24	220.219,81
13. Colombia	6	148.866,69	28.724,32	12.768,42	2.463,71	136.098,27	26.260,61
14. Costa Rica	—	—	—	1.592,21	307,22	—	—
15. Cuba	9	223.300,03	43.086,49	12.297,91	2.372,92	211.002,12	40.713,57
16. Czechoslovakia	29	719.522,30	138.834,23	50.006,26	9.648,88	669.516,04	129.185,35
17. Denmark	12	297.733,37	57.448,64	23.598,34	4.553,38	274.135,03	52.895,26
18. Dominican Republic	1	24.811,11	4.787,39	235,89	45,52	24.575,22	4.741,87
19. Estonia	3	74.433,34	14.362,17	4.236,19	817,39	70.197,15	13.544,78
20. Finland	10	248.111,14	47.873,87	18.062,32	3.485,19	230.048,82	44.388,68
21. France	79	1.960.078,—	378.203,60	105.452,73	20.347,46	1.854.625,27	357.856,14
22. Germany	79	1.960.078,—	378.203,60	—	—	1.960.078,—	378.203,60
23. Great Britain	105	2.605.166,98	502.675,67	118.630,48	22.890,14	2.486.536,50	479.785,53
24. Greece	7	173.677,80	33.511,71	14.967,85	2.888,10	158.709,95	30.623,61
25. Guatemala	1	24.811,11	4.787,39	1.168,43	225,45	23.642,68	4.561,94
26. Haiti	1	24.811,11	4.787.39	5.286,58	1.020,06	19.524,53	3.767,33
27. Honduras	1	24.811,11	4.787.39	—	—	24.811,11	4.787,39
28. Hungary	8	198.488,92	38.299,10	3.403.23	656,66	195.085,69	37.642,44
29. India	56	1.389.422,38	268.093,69	91.691,45	17.692,17	1.297.730,93	250.401,52
30. Irish Free State	10	248.111,14	47.873,87	4.684,46	903,88	243.426,68	46.969,99

31. Italy	60	1.488.666,84	287.243,24	88.999,23	17.172,70	1.399.667,61	270.070,54
32. Japan	60	1.488.666,84	287.243,24	94.995,18	18.329,64	1.393.671,66	268.913,60
33. Latvia	3	74.433,34	14.362,17	5.136,81	991,16	69.296,53	13.371,01
34. Liberia	1	24.811,11	4.787,39	—	—	24.811,11	4.787,39
35. Lithuania	4	99.244,46	19.149,55	5.204,12	1.004,15	94.040,34	18.145,40
36. Luxemburg	1	24.811,11	4.787,39	3.278,53	632,60	21.532,58	4.154,79
37. Netherlands	23	570.655,61	110.109,91	37.333,70	7.203,66	533.321,91	102.906,25
38. New Zealand	10	248.111,14	47.873,87	13.265,84	2.559,69	234.845,30	45.314,18
39. Nicaragua	1	24.811,11	4.787,39	—	—	24.811,11	4.787,39
40. Norway	9	223.300,03	43.086,49	22.395,66	4.321,32	200,904,37	38.765,17
41. Panama	1	24.811,11	4.787,39	2.353,04	454,03	22.458,07	4.333,36
42. Paraguay	1	24.811,11	4.787,39	1.275,99	246,21	23.535,12	4.541,18
43. Persia	5	124.055,57	23.936,94	8.656,52	1.670,30	115.399,05	22.266,64
44. Peru	9	223.300,03	43.086,49	—	—	223.300,03	43.086,49
45. Poland	32	793.955,64	153.196,39	52.513,29	10.132,62	741.442,35	143.063,77
46. Portugal	6	148.866,69	28.724,32	20.723,42	3.998,65	128.143,27	24.725,67
47. Roumania	22	545.844,50	105.322,52	46.572,13	8.986,25	499.272,37	96.336,27
48. Salvador	1	24.811,11	4.787,39	—	—	24.811,11	4.787,39
49. Serbs, Croates and Slovenes (Kingdom of)	20	496.222,29	95.747,75	36.913,32	7.122,55	459.308,97	88.625,20
50. Siam	9	223.300,03	43.086,49	13.265,84	2.559,69	210.034,19	40.526,80
51. Spain [1]	27'75956	678.210,06	130.862,89	62.665,25	12.091,47	615.544,81	118.771,42
52. South Africa	15	372.166,72	71.810,81	38.540,05	7.436,43	333.626,67	64.374,38
53. Sweden	18	446.600,06	86.172,98	35.397,87	6.830,14	411.202,19	79.342,84
54. Switzerland	17	421.788,95	81.385,59	32.494,11	6.269,85	389.294,84	75.115,74
55. Uruguay	7	173.677,80	33.511,71	10.362,07	1.999,40	163.315,73	31.512,31
56. Venezuela	5	124.055,57	23.936,98	8.426,24	1.625,87	115.629,33	22.311,11
	986'83333	24.460.190,75	4.719.675,59	1.400.000,—	270.134,68	23.061.782,96	4.449.848,13
					Less Costa Rica refund	1.592,21	307,22
						23.060.190,75	4.449.540,91

[1] In calculating the contributions of Brazil and Spain, account has been taken of the notices of withdrawal communicated to the Secretary-General by their governments on June 14 and September 11, 1926, respectively. The number of units for the annual contribution of these states (29 and 40) has consequently been reduced to 13'07377 and 27'75956; but the refund of the 1926 surplus is based on the full number of units. This explains the difference between the actual value of the unit (24.811,11 gold francs) and the value of the unit as it appears after dividing the sum to be recovered by the number of units (24.786,55 gold francs). [In the 1929 Budget account will be taken of the fact that Spain has cancelled her notice of withdrawal and so is responsible for her full 1928 contribution and the unpaid portion of the 1928 contribution.]

The Fourth Committee

In September the consolidated draft budget goes before the Fourth or Budget Committee of the Assembly, in which all the States Members of the League are represented, generally by Treasury experts, and practically always by delegates whose sole purpose it is to reduce still further the already twice compressed draft budget. The Registrar of the Court, the Secretary-General of the League and the Director of the International Labour Organization, together with the Chairman of the Supervisory Commission, are then cross-examined by the Fourth Committee and put up a gallant but unequal fight. Finally, the draft budget is voted by the Assembly. The whole process is rather as though Budget estimates were framed by the civil service, then submitted to a Treasury committee, afterwards sat on by a Geddes Axe Committee, and finally voted by a Parliament where everyone belonged to the Opposition. At no stage in the process is the draft budget scrutinized or defended from what might be called a " policy " point of view—except by officials who have no vote and are the servants, not the equals, of the delegates. There is nothing corresponding to the procedure by which in national parliaments a draft budget is presented and defended by a government, nor is there any such thing as " supplementary estimates." The sum voted by the Assembly is the maximum, and can never and in no circumstances be exceeded.

ADMINISTRATION OF THE BUDGET

In the excellent pamphlet on the League's finances prepared by Sir Herbert Ames (Canadian),[1] the Financial Director during the first six years of the League's existence, who was in no small measure responsible for setting the League on its feet financially, the control of expenditure is described in the following terms :

" It can be affirmed, with little fear of contradiction and no danger of disproof, that no Government exercises stricter control over expenditure than the League of Nations. Complete rules and regulations govern every phase of the work, and the system followed in assuring obedience thereto is thoroughly effective. There is Internal Control and External Supervision. To begin with, there is complete separation within a League organization between the department which authorizes payment and the department which pays the account.

" The Accounting Department is responsible for the correctness of the accounts of the League. No payments of any kind may, however, be made without the

[1] Published as one of the series of pamphlets on the organization and activities of the League issued by the Information Section of the Secretariat and mentioned in the Bibliography (p. 8).

approval of the Internal Control Office. An official, desiring to entail expenditure, must apply in writing in advance for permission to do so. If there is an available appropriation and if the proposed expenditure conforms to the prescribed rules, such permission is given by the Internal Control Officer, and a record of the commitment is kept. When the account is subsequently presented for payment it must be certified by the Internal Control Office that the agreed conditions have been fully complied with.

"An auditor, who must be in no way in the service of any of the organizations of the League, is appointed by the Council. He serves for five years and cannot be replaced save by the Council on the proposal of the Supervisory Commission. [He is assisted by a deputy auditor appointed on the same conditions.] The accounts of the League are audited at the close of each financial year, but in addition the auditor examines all payments and vouchers three times during the year. For the purpose of his audit he may call for any existing League document, and any official must, if so desired, answer his inquiries. Once a month the auditor receives a balanced statement of the receipts and expenditures of the preceding month. Any question raised by the auditor must be answered in writing by the competent official, and if the auditor is not satisfied with the reply he reports the matter to the Supervisory Commission. After each examination the auditor makes a full report to the Supervisory Commission. The rapporteur of the Commission is charged with the duty of studying the auditor's reports and of bringing before his colleagues all matters judged by him to require further consideration."

PAYMENT OF THE BUDGET

In November the Secretary-General notifies the States Members of the amounts at which they have been assessed for the current year (amounts which the governments concerned have themselves agreed to at the Assembly in September). The contributions are then paid in in the course of the year in gold francs, or, in other words, American dollars. In order to get over the difficulty that few states pay their contributions in the early part of the year the League has by degrees accumulated a working capital fund, which is kept at the level of 5,000,000 gold francs. Records are kept of how much each state has paid into this fund, and the payments are regarded as loans returnable to the contributors in whole or in part whenever the Assembly may so decide. Working capital is available for each League organization in the proportion which its budget bears to the total. Working capital is drawn as each organization needs it and returned to the "pool" when no longer required. If at the end of a budgetary period the working capital is intact and there is still a free cash surplus, the latter sum is reimbursed to the members of the League in the second following year; if, on the contrary, there is a deficit, the amount is made up by an extra assessment in the budget of the second following year.

Experience has shown that in any given year about seventy per cent. of the sums due may be expected to reach the League treasury, and another twenty per cent. will accrue in the shape of arrears paid up by states that are behindhand. Generally, however, there is a shortage of about ten per cent. (*i.e.* the revenue each year is only about ninety per cent. of the authorized budget of expenditure). Consequently the League, whose budget has already been squeezed and resqueezed to the utmost limit, is expected to economize still further wherever this is humanly possible. Where it is not—that is, where expenditure for the year exceeds ninety per cent. of the authorized budget and a deficit results—working capital is resorted to and the excess sum ultimately restored as previously described. In this connexion it should be remembered that in the case of the League there can be no supplementary estimates, as there are in national budgets, and that the regulations of the budget are purposely framed so as to make "transfers" from one chapter to others well-nigh impossible.

ARREARS OF PAYMENT

A few governments, such as some Central American Republics and China, are badly in arrears with their contributions. In the case of China the reason is obvious. As for the Central American Republics, their contributions are so minute (each being one unit valued at about £950) that whether they pay or not does not much matter, particularly as they rarely appear at League meetings. It has often been suggested that some form of "sanction" should be applied in the case of states who are persistent defaulters, such as disqualifying them from election to chairmanships or vice-chairmanships of committees, or to the Council, or even disqualifying them from voting altogether. This, however, does not seem practicable in the case of China, for the reasons touched upon in Chapter VI.,[1] while one state—namely, Costa Rica[2]—felt so offended at the Assembly's insistence on collecting arrears that it withdrew from the League after paying its back dues. It is probably better to wait with strong measures until the League has reached the point where threats of withdrawal can no longer be indulged in in a way that is still unfortunately possible. On the whole the financial position of the League is strong and the governments satisfied with the existing allocation, and that should suffice for the next few years.

[1] See above, p. 149. [2] See above, p. 105.

LIMITS OF THE BUDGET

The budgets voted by each of the first eight Assemblies were as follows: In 1920, 21,250,000 francs; in 1921, 20,873,945 francs; in 1922, 25,673,508 francs; in 1923, 23,328,684.41 francs; in 1924, 22,658,138 francs; in 1925, 22,930,633 francs; in 1926, 24,512,341 francs; in 1927, 24,460,190 francs.

The Bed of Procrustes

It would not appear that the increase in the budget has been very alarming, particularly in view of the fact that the League's membership in the first seven years increased from forty-two to fifty-six states, and that the range and importance of its activities have steadily increased and are presumably meant to increase if the League is to become what its founders intended. Moreover, at the Seventh Assembly Germany entered the League, which meant that another seventy-nine points were added to the total among which the budget was allocated, so that the contributions of all the member states were correspondingly reduced. Nevertheless the Indian Delegation, which throughout their career on the League have been conspicuous for a degree of parsimony on budgetary matters remarkable even in the Assembly,[1] put forward the proposition in 1926 that the Assembly should pass a resolution limiting the League's budget to its present level. This resolution was hotly combated by other delegations, but fought for by the Indian Delegation with a tenacity that resulted in the following resolution being adopted by the Seventh Assembly:

"The Fourth Committee,

"Noting the tendency of the budget of the League to increase, and considering that, in the present financial state of most countries of the world, every effort should be made to resist this tendency;

"Is of opinion that, as a preliminary to the discussion of the details of the budget and as a general guide to their consideration, it is desirable, without putting obstacles in the way of the development of the League, to keep in view a maximum limit of expenditure with the object of securing that the contributions of individual states shall not normally in future exceed their contributions for the current year;

"And that copies of this resolution should be communicated to other Committees concerned with measures involving expenditure."

The regulations of the Assembly already provide that "no new proposal involving expenditure can be presented to the Assembly without having previously been examined and reported upon by

[1] The reason apparently being that the Indian Government considers India's contribution too high, although on any computation of population, revenue, etc., it is bound to be considerable. See, however, also the reasons drawn from the general attitude and status of India in the League, in the chapter of Volume III. on "The International Position of the British Empire."

the Fourth or Financial Committee," which, as Sir Herbert Ames in the pamphlet already quoted remarks, is a very effective safeguard, for although the Assembly is in the last analysis supreme, " enthusiasm for expenditure has a chance to cool in the Finance Committee, and the Assembly, if it receives an adverse report, rarely decides upon new expenditure." To make assurance doubly sure the Assembly has further provided that no other League organization can accept any offer of funds which may at some future date involve or imply an increase in the League's budget without the previous sanction of the Assembly.

The reason for this rule was that the Health Organization received financial grants from the International Health Board of the Rockefeller Foundation for financing various activities, on the usual principle of the Foundation—namely, that the grant was given for a limited period of years to set some enterprise going and prove its worth, after which those who benefited were supposed to take it over themselves.

Under this grant, for instance, the so-called interchanges of Medical Officers of Health have become a highly appreciated part of modern public health education. Nevertheless, as the Rockefeller grant decreased in 1926, 1927 and 1928, the fifty-five States Members of the League who had benefited by this system for six years could not find the sums necessary (an increase of 300,000 francs, or about £12,000, each year) to keep this work going on the previous scale—that is, the League is failing to make up by increases in the budget for the gradual decrease of the Rockefeller grant, which in a brief period of years will come to an end altogether, and with it presumably this important branch of the Health Organization's work.[1]

At one time the League did not have the money to print copies of the reports sent in by mandatory Powers, or even to reprint the reports of its own Mandates Commission! For two years the English edition of the Treaty Series—a publication obviously of the greatest importance to all those seriously interested in international law and relations—could be printed only on money contributed from private American sources. After the first meeting of the Committee on Codification of International Law, whose proceedings were obviously also of the widest interest, the president of the Committee, Mr Hammarskjöld, actually had to pay out of his own pocket for printing the minutes of the Committee. The Eighth Assembly cut down the Secretariat appropriation for newspapers by one-fifth,

[1] See the chapter in Volume II. on " World Public Health."

although with the increase of the League's activities and of the interest in them of public opinion it is clear that the volume of Press reports and comments is growing steadily, and publicity is supposed to be the life-blood of the League.[1] These instances could be multiplied. But ridiculous and humiliating as they are, they are not nearly so dangerous as the all-pervading "preventive" influence of the pressure of money shortage. For every activity that is hampered or mutilated by petty restrictions there are ten that fail to come into existence at all, because everyone knows beforehand that, admirable as the proposed activity may be, it is useless to expect any money for undertaking this new enterprise.[2]

ONE-EIGHTH OF A FARTHING ON THE LEAGUE TO FOURTEEN SHILLINGS ON WAR

In spite of these facts, which give an impression of skimping and scraping and stunted growth rather than careless ease, there is a tendency in many quarters to think of the League in terms of a vague opulence. This is in large part simply a way of attacking the League by those who are hostile to it on other grounds. But it is also due to sheer ignorance. These matters must be reduced to numbers and examples that mean something to the man in the street. For instance, the British share of the League budget is just under £100,000, or less than one-eighth of a farthing per £ in the British 1927 Budget as compared with fourteen shillings for expenditure on wars, past or to come. Indeed it is difficult to realize just how small the League budget is: the whole budget paid for by fifty-six states for the Secretariat, technical, advisory and administrative organizations, Council, Assembly and special conferences, Court, International Labour Organization, Building Fund, Reserve Capital Fund, etc., is under £1,000,000, which is less than the price of one good-sized submarine. The battleship *Rodney* costs £2,000,000 a year simply to maintain, or twice what the whole world pays for the League. It and its sister ship the *Nelson* cost £7,000,000 each to build—that is, more than the whole world pays for the League during fourteen years—although it is practically certain that both of them will be scrapped as obsolete without ever firing a shot in anger. Britain's annual expenditure on armaments alone is equal to about seventeen centuries (1700 years) of her contribution to the League—that is, in about fourteen months

[1] In some cases the International Labour Office has actually not had the money to publish its reports.

[2] See for instance the account in Volume II. of the strenuous attempt to prevent the Economic Organization from taking up the tasks laid upon it by the World Economic Conference, on the plea that its budget must be stabilized.

Great Britain spends enough on preparation for war to have kept the League alive from the birth of Christ to the present day. The sums spent in indemnifying contractors for contracts cancelled after the Washington Conference came to something more than the British contribution for that year, and printing and stationery for the navy in the same year came to about an equal sum. To turn again to the 1926 Budget estimates, the upkeep of the 541 Metropolitan policemen attached to dockyards at home came to £150,960, or more than one and a half times as much as the British contribution to the League. Half pay and unemployed pay of naval and marine officers figuring in the so-called non-effective services is £178,000, or nearly double the British annual contribution to the League. Comparisons of this sort can be multiplied indefinitely, but the main point is that the British contribution to the League is on a level with the kind of unconsidered trifles that are too minute and too much a matter of routine for them to attract attention in Budget discussions. All of the items mentioned are so obviously necessary and so small that they go through unnoticed as part of the " small change " of the Budget. But the corresponding trifles contributed by Great Britain and other member states to the League are still the subject of tremendous debates and heart-searchings. To take another case: no one questions the wisdom of our spending alone £1,000,000 a year (*i.e.* a sum greater than the whole League budget paid for by fifty-six states) on the Empire Marketing Board. It is obvious to all parties that money so spent is the soundest of good investments. But suppose any delegate at the Assembly had the temerity to suggest that the fifty-six members of the League should between them raise half that sum to enable the League Economic Organization to undertake precisely similar work. He would be voted down—by none more firmly than our own delegation. And yet it would be more practical to have this work undertaken by a world-wide than a merely imperial organization, and the practical advantages to us would be as great, while the expenditure would be only a fraction of what we cheerfully shoulder for the Empire Marketing Board. Economic advantage takes no heed of political frontiers; measures for linking up producers and consumers by, *e.g.*, better transport, marketing and advertisement, or for increasing the productivity of rubber, coco, sago and other tropical plants, would be just as profitable to all concerned, including ourselves, when undertaken internationally as they are within the Empire.[1]

[1] See the chapter on economic and financial activities in Volume II.

The Relative Payments of Great and Small States

The great states explain their anxiety for keeping down expenditure by pointing out that they pay such a large proportion of the budget. Great Britain, for instance, pays about one-tenth and the whole Empire (seven members of the League) about one-quarter. But to this the small states reply that they pay a proportionately larger share of their national revenue. Liberia, for instance, pays $\frac{1}{105}$ as much as Great Britain, whereas her revenue is not more than $\frac{1}{4250}$ that of Great Britain. Moreover, say the small states, the Great Powers have a large number of their nationals, not only on the Secretariat, but in all League committees, and in this way get some of their money back, apart from the fact that their voice in the League is of decisive importance. Both sides are right, and the arguments of both merely point to the fact that the budget is so tiny that it is impossible to make more than a very rough-and-ready distinction between the amounts the different states are to pay, since the dignity of membership itself requires that even a small state should pay a reasonable sum.

DANGERS AND DEFECTS OF THE PRESENT SYSTEM OF BUDGET CONTROL

It is of course not only right and natural, but inevitable, that the States Members of the League should control the budget rigorously and should all have a say in the way it is framed and the amount every state has to pay. The League is not a super-state, and every one of its members must agree to the budget before it can be passed. In the lean years after the war, when money was desperately hard to get and every nation had to pull in its belt, it was natural that the wave of economy and of reaction against war-time extravagance should have full play within the League as well. But the League budget was too new and untried, too slight a structure altogether, and there was too little understanding and belief on the part of the States Members of the necessity for any expenditure in international matters to afford the same resistance to the process as was encountered in the relatively tough and well-established national budgets. The League budget system therefore suffered more heavily from the "Geddes Axe" era—the post-war wave of indiscriminate economy—and has not shown the same resilience in recovering from this state of mind as the national budgets.

THE AXE AND THE STRAIT-JACKET

The whole system of controlling the League's finances has retained the form stamped upon it in these years, and is based so exclusively upon the expense-cutting point of view and is so divorced from any consideration of policy that it is acting as a strait-jacket on the natural growth of the League. Besides, it is uneconomic and defeats its object, as is generally the case with extreme systems. Take, for instance, the activities of the Fourth Committee: the whole Committee of over forty highly paid members once had a long and acrimonious discussion as to whether a typist in the London office of the Secretariat should have an extra ten shillings a week. By the time they had finished they had cost their governments many times the proposed increase for the whole year.[1] It has happened several times that the Committee, beginning with an attempt to reduce the estimates as passed by the Supervisory Commission, have actually increased the budget. But take a favourable case. For instance at the Seventh Assembly the Committee reduced the budget from 24,615,097 gold francs to 24,512,341 (a reduction of 102,756 gold francs). It costs about 10,000 francs a day to keep the Assembly and its services going, so that out of the three weeks spent by the Fourth Committee on the budget ten and a half days wipe out the decrease of 102,756 francs. But, in addition, the forty-odd members of the Committee are costing their governments, with salaries and allowances combined, an average of 200 francs a day (not counting their secretaries, technical experts, etc.), which for, say, twenty days works out at $20 \times 40 \times 200 = 160{,}000$ francs, or enough once more to wipe out the decrease effected one and a half times over. Result: the Committee saves 100,000 francs by the expenditure of over 250,000!

At the Eighth Assembly the Fourth Committee overreached itself: it had a long argument as to whether or not to vote 45,000 francs (£1800) for the work of codification of international law, and finally referred the matter to the Supervisory Commission for what practically amounted to a decision on whether the policy involved was worth the money. The Supervisory Commission of course decided in the negative. The effect of this refusal of a small credit to an important branch of the League's work is pointed out in the chapter on "The Development of International Law" in Volume II. What matters here is that when the report of the Fourth Committee came before the Assembly, on what was to be the last day, its action was strongly condemned by a vote of 21 to 19 (Great

[1] At this they ended by granting it!

Britain voted in the minority).[1] This meant the question returning to the Fourth Committee, which had a rather unhappy night session in the light of the Assembly's remarks on its lack of political sense and exclusive devotion to saving money on ha'porths of tar, as well as on the wrongness in principle of referring questions of policy to the Supervisory Commission, whose composition and functions make it radically incompetent to utter any opinion on such matters. Finally there was a compromise by which the Secretariat was authorized to find the missing 45,000 francs by transfers from other chapters of the budget. Ordinarily, as has been pointed out,[2] such transfers are rendered well-nigh impossible by the rules for administering the budget, but in this case the Assembly made an exception.

The whole incident is illuminating, for it shows the extent to which the Assembly delegations have slipped into the habit of leaving a free hand to their treasury representatives—for after all it was the same governments which voted for the credits in the First or Judicial Committee and Assembly and against in the Fourth!—and how far the latter have gone in usurping and even thrusting upon the Supervisory Commission functions—namely, that of considering policy—which they were never designed to perform and are constitutionally incapable of performing properly. It also shows the beginning of a revolt against the present system of the axe and the strait-jacket.

In its report of May 1928,[3] the Supervisory Commission objected strongly to the draft budget for 1929 having risen to 27,000,000 francs, and although it admitted that the increase was chiefly due to the instructions of the Assembly and International Labour Conference went on to suggest that "some general limitation should be possible to the cumulative growth of personnel and expenditure," and that 25,000,000 francs should be the standard. This disastrous conclusion and the impertinent—considering their source—remarks on League policy accompanying it were referred to the Ninth Assembly.

The Need for considering Policy

If the League's finances are to be in a healthy state the whole system of framing the budget must be recast so as to provide for

[1] The Assembly of course must be unanimous before a budget is finally accepted, but there is a "gentlemen's agreement" to the effect that if a majority votes against the report of the Fourth or Budget Committee the report is referred back to that body, just as within the Fourth Committee majority votes on budget questions are accepted by the minority. But in the negotiations and discussions leading up to the voting the threat to veto any given credit is occasionally used.

[2] See above, p. 440.

[3] A. 5. 1928, X.

proper consideration from beginning to end, not only of the " treasury " but also of the " policy " point of view.

One possible way of doing this might be to have the Council take seriously the business of approving the draft budget as submitted by the Supervisory Commission. Hitherto the Council has merely passed on the draft to the Assembly, but it might make one of its own members the rapporteur of a committee formed of the chairmen of the Technical and Advisory Committees of the League as well as a representative of the Court and a member of the Governing Body of the International Labour Organization. This committee should then take the report of the Supervisory Commission and study it and the estimates from the policy point of view, framing a report of its own. The Council would then pass on to the Assembly not only the Supervisory Commission's report, but a combined report, including also the observations of the " Policy Committee."

The Assembly, again, might compose its Fourth Committee, not of Treasury experts, but of delegates, who might be assisted by technical advisers who were representatives of their finance ministries, but who should look upon themselves as at least as much responsible for promoting the activities of the League as they were for reducing its expenditure.

Or, if the Budget Committee is to remain a purely treasury body, its functions might be limited in principle to discussing totals: it might be empowered when receiving the reports of the various " policy " committees to discuss the credits proposed by each committee only as a whole and only from the point of view of whether the total showed an increase over the corresponding sums fixed by the Supervisory Commission. Even then it should not be able to discuss the increase if the responsible committee had stated in its report that it had decided upon such and such a conference, committee or other extra work as a matter of policy, in spite of their involving an increase of expenditure over the Supervisory Commission's report. This would mean in fact that each " Policy Committee " would to some extent become a budget committee, and that the present Financial Committee would become a regulating and co-ordinating body to see that the budget kept within reasonable limits and that the various items were in harmony with each other, but without the extensive powers it possesses at present.

THE RIGHT FRAME OF MIND

This or some other method is easy enough to devise on paper, but the real difficulty is much deeper. The truth is that the attitude of certain sections of public opinion and of most delegations at the Assembly is not due merely to a natural and laudable desire to reduce expenditure as much as possible. It is a reflection of the fact that they simply do not understand or believe in the League. They realize dimly—or most of them do by this time—that it is the proper thing to make pretty speeches about the League, but the idea of actually paying good money for League work still strikes them as exotic and bizarre. What is wanted fundamentally is to alter the point of view of the governments, to make them feel that they are a part of the League and the League concerns them. It is a significant fact in this connexion that our own Treasury takes more time and trouble over pennies in the League budget than over pounds in the national Budget. Items so minute that they would be passed as a matter of routine in national Budget estimates are, when they appear in the League draft budget, scrutinized with a magnifying-glass, measured with red tape, discussed, objected to, worried over and generally made the object of meticulous examination and anxious study. The explanation is always the same, and it is also the answer to the contrast between our attitude to the expenditure of the Empire Marketing Board and that on the League Economic Organization: whereas the national Budget is felt to be "ours," a routine necessity, the League budget is looked upon as something to which we contribute from the outside—a more or less exotic luxury that must be kept down to a minimum and where no item is so useful or usual as to be taken for granted. It is this mentality that must be altered.

THE LEAGUE MUST GROW

This is the third pre-requisite for the future stability and development of the League. Instead of complacency at the fact that the League budget is stable while the membership and activities of the League increase, instead of alarm at a tendency to increase and attempts at blocking this tendency by fixing a maximum limit to the budget, it should be realized that the budget *must* increase, that a failure to increase is the sign of something wrong with the League. The League cannot stand still; it must grow, and it cannot grow without costing more money. Everyone wants the League to grow and develop in the abstract. But few seem to have realized that it cannot grow on air alone—even hot air. The world is at present spending about six hundred times as much per year on

preparations for war as it does on the League. We should boldly look forward to a time when armaments expenditure will be a tenth of what it is to-day and the League spending ten times its present budget. The net saving would be enormous and the gain in security and prosperity incalculable.

THE FINAL COMMENT

The building erected by the International Labour Organization as their permanent quarters has been variously compared to an orphanage, an asylum, a factory or a penitentiary, and resembles all these institutions. This is because the money found for it by the fifty-six members of the League was 4,000,000 francs, or about one-twenty-fifth of, *e.g.*, what the state of Kansas paid for its state capitol. An equally magnificent sum, after long hesitation and when conditions of overcrowding in the League's temporary quarters had made Assembly meetings almost unbearable, was devoted for the League's permanent headquarters, the capitol of humanity. The architects' committee, however, reported adversely, saying that the property allotted and the sum voted were insufficient to produce a building that they as architects could conscientiously approve as fulfilling its purpose. And so after several years' delay the League was gradually forced by the reports of its own architects to put aside, first the sum of 11,000,000, then 16,000,000, and finally 19,600,000 francs (£785,000), and was, fortunately, given a very handsome piece of property by the Swiss Federation. Thus the building that is to be the concrete and visible embodiment of the League and all it stands for has at last been allotted three-quarters the money for a good-sized submarine and one-fifth of the aforementioned state capitol of Kansas. The whole thing is an object-lesson in the international parsimony and lack of imagination of the fifty-six States Members of the League. The whole question of the permanent building for the League is perhaps the final comment on the League's finances, for it shows the League as a solidly established and going concern, but also demonstrates how far the component nations still are from regarding the League as the supreme reality in international affairs, the guarantor of world peace and the harbinger of a new world order. And the strength of the League, of course, is measured by the faith of its members.

CHAPTER XII

THE TECHNIQUE OF THE LEAGUE

DIPLOMACY BY CONFERENCE

THE technique of the League is the art of holding international conferences successfully. The League, from one point of view, is simply a group of states which have pledged themselves to apply the method of "diplomacy by conference." Three things are required for the success of conferences: careful preparation of the questions at issue, as well as of the men who are to meet; the driving force of public opinion behind the governments concerned; and permanent machinery to fulfil these conditions, as well as to execute the decisions of conferences when they are held.

The League, which may be described as a series of international conferences centring on certain permanent machinery, like beads on a thread, and directed to working the system of co-operation and peaceful settlement of disputes laid down in the Covenant, does broadly satisfy these conditions. Through the League Secretariat and technical committees, conferences are thoroughly prepared and their decisions executed. The Council and Assembly are government conferences, where the reports and suggestions of experts can be considered and special conferences arranged when some matter has ripened to the convention-making stage; through the League international civil servants, national experts, technicians, responsible statesmen and representatives of private organizations are all made to work together; the Press is kept informed and public opinion focused on the questions at issue.

This chapter attempts to show the conditions in which the League machine works, discusses one or two general questions raised by its working, goes on to analyse how the League works, and draws some tentative conclusions, which will be carried further in the chapter on "The Evolution of the League" occurring at the end of Volume II. in the light of the additional data contained in that volume.

THE "GENEVA ATMOSPHERE"

The "Geneva atmosphere" has been briefly referred to as the absence of a national atmosphere and the growth in its place of

a sense of world issues and international perspective.[1] But the term is so frequently used, and represents an imponderable of such importance, as to be worth analysing more closely.

ITS ELEMENTS

Its elements may be analysed roughly as:

(a) *Peace Impulse*

(1) The impulse given at the Peace Conference, transmitted to the First Assembly and League officials, and kept alive by the attitude of public opinion in the countries members of the League. The League was framed with the purpose of maintaining world peace and affording a way out from the horrors of the world war. It has disappointed many high hopes and developed along lines different from what its founders intended, but its achievement and promise are sufficient to make it still the symbol and the instrument of those who are in earnest about world peace. There are more or less powerful and well-organized groups of public opinion in the different countries committed to this view of the League and active in its support, and the attitude of the Press, and public opinion in general, is an unseen but all-powerful influence tending to make governments behave somewhat differently and on the whole better in League conferences than elsewhere.[2]

(b) *Covenant*

(2) The obligations of the Covenant. Governments meeting in League conferences are bound by certain obligations which are designed to achieve "international peace and security by the acceptance of obligations not to resort to war, by the preservation of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations."[3] They are apt to be reminded of these obligations if they attempt to depart too widely from them and, in general, feel bound to maintain certain standards of conduct and policy owing to their existence.

(c) *International Machinery and Methods*

(3) In the third place, governments working through the League have to use international machinery, such as the Secretariat and technical committees, which ensure objective and

[1] See above, pp. 164-165.

[2] See the chapter on "Public Opinion in Relation to War and Peace" in Volume III.

[3] The preamble to the Covenant. See Annex A, p. 487.

thorough preparation of League conferences and due consideration of all the interests involved. The international and technical nature of the League's machinery for preparing conferences, publicity, and the careful division of labour between various parts of the machinery militate against the conditions of confusion, ambiguity and suspicion that favour intrigues and fraud—for this, secrecy and the happy-go-lucky methods of the " old diplomacy " are needed!

PUBLICITY AND PRIVACY

The Importance of Publicity

This brings us to the question of publicity, which is of the highest importance in the technique of the League. President Wilson's famous and oft-quoted phrase about " open covenants openly arrived at " sums up the feeling at the time the League was founded against " secret treaties " and the whole system of diplomacy when the doings of foreign offices were shrouded in mystery and the man in the street was not supposed to have either the right or the competence to interest himself in the arcana of foreign affairs. There were to be no more alliances and no more secrecy in the new order inaugurated by the foundation of the League.

The importance of the publicity of League proceedings—the Assembly and its committees, all League conferences, most of the meetings of the Council, and those of the Disarmament, Arbitration and Security, Economic, Consultative and other big committees are public—can hardly be exaggerated. It has already been discussed,[1] and is touched upon below.[2] As Professor Rappard has put it:

" The greatest service the League of Nations has so far rendered the cause of peace, besides the habits of international co-operation it has fostered, is, to my mind, the very widespread interest it has created and stimulated the world over in foreign affairs. The Wilsonian formula concerning the pacifying virtues of ' open covenants openly arrived at ' has often been scoffed at. As many other famous oratorical phrases, if taken literally, it constitutes an easy mark for critical sarcasm. At bottom, however, it expresses a vital truth.

" The secrecy which in the past has always surrounded diplomatic negotiations has often favoured intrigue and has invariably bred distrust. Diplomatic intrigue may of itself endanger peace, and international distrust invariably does. The sunlight of publicity alone can dissipate the fogs of suspicion and melt away icebergs of instinctive antagonism which to-day constitute the two gravest perils of international navigation. Now, may we not say, without

[1] See pp. 136-137. [2] See p. 457.

exaggeration, that in the history of the world there has never been a time when foreign affairs have been so widely and so intelligently discussed by the man in the street as the present? The sun of Geneva is effectively breaking through the clouds of ignorance and indifference which darkened and narrowed the intellectual horizon of past generations." [1]

But, as generally happens with popular reactions against the existing state of affairs, the new view proved somewhat too sweeping and simple when applied to the complex realities of the post-war world. What became of the view as regards alliances and regional agreements has already been touched upon,[2] and is referred to below.[3]

The Advantages of Privacy

With regard to publicity, too, it was not long before it became apparent that, paradoxical as it may seem, one of the advantages of League procedure was the opportunities it afforded for prime and foreign ministers and other responsible statesmen to meet freely and regularly and converse privately. When Sir Austen Chamberlain and Signor Mussolini have lunch on a yacht, for instance, the Press of two hemispheres is filled with sensational gossip as to the object of the meeting. At Geneva the foreign ministers of the Great Powers meet each other and their colleagues from other countries daily, and can have as many lunches or tea-parties as they like in complete privacy, and with no fuss or formality.[4] Often statesmen who have been anxious to meet, but are unable to do so owing to the nationalists of their respective countries, have first established contact at Geneva, and the private conversations initiated there have subsequently been developed into a policy of reconciliation and co-operation. This was the case, for instance, with the Hungarian and Czechoslovak foreign ministers, whose meetings at Geneva laid the foundation for the subsequent Hungarian reconstruction scheme. For not only can foreign ministers meet easily at Geneva, but they meet under circumstances where they are co-operating on a common task and are surrounded by other statesmen who may act as go-betweens. The work they are engaged on itself may suggest special applications and developments that fit the particular case of the countries concerned. The chief " invisible export " of the League is good will and understanding, and the chief output of the Assembly or Council is often meetings and discussions which the

[1] *The Problems of Peace*, pp. 40-41.
[2] See pp. 157-159.
[3] See p. 486, and the discussion in Volume II. on the peaceful settlement of disputes, security and disarmament.
[4] See above, pp. 165-166.

existence of the League makes it possible subsequently to turn into definite policies. The value of such personal contacts is obvious, and for some years this was the one aspect of the matter that was emphasized by public opinion.

OBJECTIONS TO PRIVACY

With the regular attendance at League meetings of the foreign ministers of the Great Powers, however, this aspect not only grew more important than ever, with a consequent increase of the benefits that it might be expected to yield, but developed certain features which excited apprehensions in certain parts of public opinion, particularly in the smaller countries. It was alleged that the Great Powers were tending to form an inner ring, reviving the Concert of Europe and settling matters among themselves that should have been dealt with through the League. These criticisms were directed particularly to the handling of disputes by the Council, and were generally connected with the whole question of the attitude of the Great Powers to the League and the effect of the Locarno settlement and the entry of Germany on this attitude.

Thus Senator Henri de Jouvenel, who for many years had been a member of the French delegation to the Assembly, publicly announced his refusal, just before the Eighth Assembly, to attend that body, on the ground that in his view the French Government was lending itself to a policy of reviving the old Concert of Europe and not standing by the Covenant and the rights of small nations as members of the League. Whereas Locarno, he said, was looked upon by France as consolidating the *status quo* and by Germany as a step towards the evacuation of the Rhineland and securing a free hand in eastern Europe, Sir Austen Chamberlain saw in it above all a revival of the consortium of Great Powers.

At the Eighth Assembly itself the Dutch Foreign Minister, Jonkheer Beelaerts van Blokland, in the course of the debate on the Secretary-General's report, remarked that :

" It would be highly regrettable from the point of view of the authority and prestige of the League if its Members decided to deal among themselves, and outside the scope of the League, with questions which, under the terms of the Covenant, come within the League's competence." [1]

The same note was sounded by M. Löfgren, the Swedish Foreign Minister, who remarked that:

" The Swedish and other Scandinavian delegations have more than once suggested to the Assembly that there should be more definite regulations for

[1] Third Plenary Meeting, September 6th, 1927.

the Council's mediation procedure. Such regulations would also have the advantage of providing the public with an assurance that current questions of a political nature would be dealt with by the Council itself. If the newspapers and the accounts of various interviews which have taken place are to be credited, burning political questions have been discussed here at Geneva at meetings at which only certain members of the Council were present. Of course nobody would think of blaming statesmen for discussing separately problems which directly concern their own country, even if such problems come within the competence of the League.

"But, frankly, last year's experience was not such as to dispel the apprehensions of those who, at the last Assembly, expressed the opinion that an increase in the membership of the Council would enhance the danger of important political questions being withdrawn from its competence and transferred to an inner circle of representatives of certain Powers.

"I need not say that, if this tendency were to increase, the League of Nations and its executive organ, the Council, might quite conceivably lose their hold on affairs and be prevented from accomplishing their high mission as the guardians of peace." [1]

Next day the first Norwegian delegate, M. Hambro, put this view even more strongly in the following words:

"An impression has been abroad during these last two years that there is within the Council a supreme Council, which meets at the same time as the Council, but in private, to discuss the problems with which the Council itself is to deal later. It has even been said that regular agendas have been prepared for such meetings, and that in this way questions have been decided before they were submitted for consideration to the Council as a whole.

"As mentioned by the Swedish delegation, no one would dream of reproaching statesmen with deliberating in private on problems directly interesting their own country, even if those matters concerned the League of Nations. But if this tendency should become accentuated, the League of Nations and its executive organ, the Council, would be exposed to the danger of losing control of affairs and would see themselves deprived of the possibility of accomplishing their high mission as safeguards of peace.

"Nothing has more strongly emphasized the importance of the League and its Council than the fact that three Great Powers have sent their Ministers for Foreign Affairs to the meetings of the Council and those of the Assembly. It is not unessential to remember, however, that they come to Geneva not only, or even mainly, because they are Foreign Ministers, but also because they are members of the Council and under an obligation to the League." [2]

The Defence of Hotel Diplomacy

M. Briand replied before the Assembly to Senator de Jouvenel's criticisms, and both M. Briand and Sir Austen Chamberlain replied to the remarks just quoted in the Eighth Assembly. Their general argument was that the Great Powers, like other countries, had a good deal of current business to settle, and that their foreign

[1] Fourth Plenary Meeting, September 7, 1927.
[2] Sixth Plenary Meeting, September 8, 1927.

ministers, like the foreign ministers of other countries, were glad of the opportunity for direct conversations afforded by Council and Assembly meetings to discuss their common affairs. Also they were in the habit of discussing League matters privately like everyone else, not with the object of in any way taking out of the hands of the League bodies, of which they were members, the business they were meant to transact, but simply in order to prepare themselves for such business. Private and informal conversations are an indispensable part of all negotiations, and in recognizing this fact the Great Powers were only doing what the little Powers had always done. As regarded particularly the settlement of disputes, there was no desire whatever on the part of the Great Powers to keep such matters from the League. On the other hand the League should not be brought into every conflict, but should be appealed to only if direct negotiations had failed. It was always better to settle matters by friendly agreement out of court and only litigate as a last resort. A point not mentioned by the " defence," but which could be made with some force, is that any of the states concerned has the right to insist on the matter being dealt with in public. In private negotiations the threat of publicity may be a potent weapon, and in any case private conversations, with publicity always a possibility, and looked forward to by the parties as the final stage of the business in hand, is not open to many of the objections made against " secret diplomacy."

The general impression after the debates in the Assembly was one of satisfaction that the matter had been discussed so fully and frankly and in such a friendly spirit. Nevertheless the apprehensions of those who originally criticized the attitude of the Great Powers have not been completely allayed. While admitting that there is of course a great deal of truth in the contention that the Great Powers have the same right as others to discuss their affairs in private, and that direct negotiation and settlement by a friendly understanding between the parties should be attempted before bringing a matter before the League, they argue that the Great Powers are rapidly coming to believe that recourse to the League is always premature when one of themselves is involved and that they should always settle the affairs of the smaller Powers by their joint intervention, thus not leaving much for the League to do in the settlement of political disputes, and reviving the methods and outlook of pre-war days.

CONCLUSIONS

(a) *A Matter of Degree*

It is a trite but true observation that the whole question is a matter of degree. Hotel diplomacy, like shirt-sleeve diplomacy and the traditional diplomacy of the chancelleries, while useful in its place, must be kept within proper limits and carefully correlated with the obligations and system of the League. The difficulty is to define the limits and indicate the lines of adjustment. A matter of this sort is so essentially fluid and a question of special cases and personal impressions as to make any general conclusions almost impossible. Certain very broad and tentative lessons may, however, be drawn from the experience of the League and the attitude of public opinion and governments on these matters.

(b) *Of Method*

In the first place, as regards the question of method pure and simple, it is probably right to contend that conversations should be either *absolutely* private, with not more than three persons involved, the personal element playing its full part, and mutual concessions and frank explanations possible, or else should be part of the regular proceedings of the League, where, even if a meeting is kept private, minutes are subsequently published and the whole proceedings governed by the ordinary rules of League procedure. A private lunch or hotel conversation between two or three foreign ministers or a private or public sitting of the Council each have their part to play. It is the half-way house that is apt to create an unfortunate impression on public opinion and achieve no results. The most conspicuous case was the " tea-parties " held by the members of the Council, or the Locarno Powers or some other ill-defined group of states, at the time of the March Assembly that failed to admit Germany. The number of representatives at these meetings, together with their secretaries, assistants, etc., was so large, and the meetings were so well advertised and aroused such interest in the Press, that it was impossible to keep them entirely private, for although they kept no minutes or other records, and were supposed to be entirely secret, garbled versions put out by interested delegates were certain to find their way into the Press. Therefore, while the secrecy of the proceedings encouraged delegates to put forward intransigent claims that they would not have dared to advance in a public meeting, the meetings were too big and noisy (both literally and in their reverberations in the Press and public opinion) to make it possible for delegates to make concessions after they had adopted

a position. It may be true that it is very difficult for the representative of a country to recede from a position he has once adopted in a public meeting. On the other hand, if he knows that the meeting is public he will be very careful about what position he is going to take up before he announces it!

(c) *Of Relevance and Relative Importance*

In the second place, it may be asserted with some confidence that ministers coming to League meetings should not discuss questions wholly unconnected with the meeting unless they are of quite secondary importance. It is obviously undesirable that the work of the Council or any other League body should be entirely overshadowed by meetings of the foreign ministers of the Great Powers discussing some question of first-rate importance which has nothing whatever to do with the League. If, for instance, Germany proposed to raise the question of evacuating the Rhineland before the Council, it would be proper that the question should be discussed among the Powers directly interested at Geneva as a part of the business of preparing the matter for discussion in the full Council. But if the Allies and Germany proposed to settle between themselves how and when the Rhineland should be evacuated, they should hold their meeting anywhere but in Geneva. Delegates to a coming Council meeting should consider the work of the Council their main object and not a side-show.

(d) *The Difference between Preparation and Decision*

In the third place, even if the private conversations of members of the Council are intended to fit into their public work on that body, they should be essentially of a preliminary nature and should not, as a rule, be so important as to amount to a practical decision of the matter at issue. One object of the League is to establish a just balance of rights and interests between the Great Powers and the others, and League procedure is designed to provide a fair hearing for all concerned. These intentions are frustrated and feelings of resentment aroused among the smaller states if the Great Powers interpret the necessity for discussing privately questions that are to be dealt with at the Council in such a way as practically to arrive at an agreed policy on them before they ever reach the Council.

(e) *Aim more important than Method*

It is extremely difficult to say to what extent, if any, the limits have been overstepped. These are, it must be repeated, extremely nice questions of degree and aim. Perhaps the final comment is to say that criticisms of the methods of the Great Powers are really

due fundamentally to lack of confidence in their policy. If the smaller states really believed that the Great Powers were intelligently and wholeheartedly bent on using and developing the League to the utmost, and making it a sure guarantee of peace, they would no doubt grant them every indulgence in their methods. The apprehensions they express about the latter really reveal their anxiety with regard to the former. Thus the "tea-parties" and "hotel diplomacy" of the March Assembly aroused indignation among those who believed their aim was to force on Germany and Sweden arrangements harmful to the League, while the not dissimilar methods employed at the December 1927 Council with regard to the Polish Lithuanian conflict were not objected to, since it was generally felt that their object was the restoration of peace, and so in harmony with the Covenant.[1]

LEAGUE DECISIONS AND GOVERNMENT RATIFICATIONS

The existence of permanent international co-operation on such a large scale has aggravated and complicated the problem of how its fruits are to be garnered in international action.

Freedom to Negotiate *v.* Immediately Binding Nature of Decisions

In the first place, whereas delegates to League meetings have a certain freedom to negotiate, or co-operation would be impossible, the Assembly and Council are to some extent corporate bodies which take decisions that are final. Thus a delegate may not be bound rigidly by instructions, or there could be no give-and-take and hence no real negotiation, as Sir Austen Chamberlain has cogently pointed out on more than one occasion. But when a delegate has used his discretion to concur in an award of, *e.g.*, the Council on a dispute, the award is valid from the moment it is announced, and does not await ratification by the governments represented. Similarly, the moment the whole of the Council and a majority of the Assembly have voted for an increase in the number of elected members, or for a new permanent member to the Council, the decision comes into force.

It is true that the League hardly ever takes a decision formally binding governments without their consent, based on mature consideration. Thus the March Assembly postponed a decision on the admission of Germany and reorganization of the Council until

[1] It must be added, however, that the methods were an improvement on the famous "tea-parties," for the matter was handled by a first-class rapporteur—the Dutch Foreign Minister—working in conjunction with the competent services of the Secretariat, and there were regular meetings of the Council. See Volume II.

the requisite measure of agreement was reached. An Assembly or Council award on a dispute is not under the Covenant binding on the parties, but is merely an opinion which they are free to accept or reject, with the sole proviso that the party accepting a unanimous opinion of the Council or that of the required majority in the Assembly (always excluding the parties to the dispute) is protected by the League against resort to war by the other party. The League does not undertake to enforce such an award, nor is either party bound to accept it—the League is a peace-keeping, not a justice-enforcing, machine.

Nevertheless the dilemma to some extent persists. Making decisions contingent on subsequent ratification by the governments concerned would make the action of the League intolerably slow and uncertain in circumstances where rapidity and clarity are often imperatively required. Nor is it possible to bind delegates too rigidly and minutely by instructions or, as has been pointed out above, they will be unable to make the mutual concessions necessary to arrive at any result. So far, fortunately, the dilemma has bulked larger in the minds of students of international law than those of the delegates actually doing the work. It seems indeed in a fair way to solving itself, by the double method of ensuring that delegates shall represent a settled and well-understood policy on League matters, merely completing this by instructions for any particular meeting, and leaving simply questions of detail to the discretion of the delegate, and of the fullest use of the telephone, telegraph, aeroplane and other modern methods for keeping governments in close and constant contact with their delegates at international meetings.

Speeding up Ratification of Treaties and Conventions

A second problem is securing sufficiently rapid ratification and enactment of conventions drawn up at League meetings. This is obviously essential if conferences are to be of any practical use. The pace is already vastly greater than that before the war,[1] but not yet satisfactory.

(a) *Baker's Suggestions*

Professor Philip Baker has put forward some interesting suggestions on this head.[2] He suggests first of all that the final discussion and actual signature of general conventions should

[1] *Cf.* the account of pre-war labour conventions on p. 212 above and the account in Volume II. of the ratification of The Hague Opium Convention and International Health Convention.

[2] *British Yearbook of International Law*, 1924, pp. 62-64 ("The Codification of International Law").

take place, not at the technical conferences which prepare them, but in the Assembly.[1] In view of the nature of the delegations attending the Assembly and the interval between the technical conference preparing a convention and its final discussion at the Assembly, the chances are that there will be a greater number of immediate signatures and a general desire to sign the convention before the next Assembly. A further suggestion is that conventions should contain a clause stating that the ratification of every signatory Power would be assumed unless it informed the other signatory Powers within a certain fixed period that it did not propose to ratify. Eventually, and if the practice of adopting conventions in the Assembly became general, it might become a standing rule that ratification of any convention by the governments accepting it at the Assembly would be assumed unless a government intimated its unwillingness to ratify before the opening of the succeeding Assembly.

Finally, Professor Baker suggests that the bold innovation in procedure already adopted for international labour conventions should be extended to all general League conferences, thus doing away altogether with the formality of signature and obliging states to submit any draft convention adopted by a two-thirds vote in a conference at which they have taken part to their competent authorities for ratification within a year of its adoption, whether their own delegates have voted for the draft or not.[2] There is much to be said for cutting out the empty ceremony of signature. As has been pointed out above,[3] it was useful at a time when negotiators really had extensive powers, but is now an anachronism (particularly in League conferences, which are held on the basis of carefully prepared draft conventions that have been circulated to governments some months before [4]). On the whole, however, international labour conventions have not, in spite of the new procedure, been ratified more quickly than League conventions. This may be due to temporarily unfavourable conditions,[5] but at any rate it seems scarcely likely that governments will extend this procedure to other classes of conventions unless and until its superiority in practice has been clearly proved. In the meantime the proposals made by Professor Baker are worth careful consideration by governments and public opinion.

[1] See below, p. 469.
[2] For a description of the procedure in the Labour Organization see above, pp. 226-227, 248-249.
[3] Pp. 227-228.
[4] See below, pp. 479-480.
[5] See above, pp. 230-231.

(b) *The Assembly's Action*

Since these proposals were put forward, indeed, there has been some attempt to tackle the problem of tardy ratification. The Seventh Assembly in September 1926 expressed its regret at the undue delay in ratification of League conventions, and consequently invited the Council to " call for a report every six months on the progress of ratification and to consider methods for securing the more rapid bringing into force of these agreements and conventions." The Council accordingly, at its December 1926 session, requested the Secretary-General to submit a list of League conventions with their signatures and ratifications every six months, in March and August (*i.e.* the session just preceding the Assembly). The list includes amendments to the Covenant but not labour conventions, since the latter are examined by the Governing Body of the International Labour Organization.

(c) *Effect given to it by the Council*

Under this procedure the rapporteur (M. Zaleski, the Polish Foreign Minister) drew the attention of the Council in September 1927 to the failure to ratify the second Opium Convention, with particular reference to the fact that to come into force it required the ratification of ten Powers, of whom seven must be members of the Council and two of these permanent members. M. Zaleski pointed out that more than ten ratifications and accessions had been deposited, of which two were by permanent members of the Council, but as yet seven members of the Council had not ratified. At subsequent meetings there have been exchanges of views, in which various plans have been proposed, and each state has pointed with pride to conventions ratified by itself while complaining of their non-ratification by others.

(d) *Further Proposals*

These facts indicate that the Council will not treat the submission of the list of signatures and ratifications as a mere formality, but proposes to take steps to call the attention of states to the necessity for action. This is gratifying, but it may be questioned whether the dates of March and August are well chosen, and whether it would not be better to select December and June. At its June meeting the Council puts the final touches to a number of reports that are sent out to the members of the League for discussion at the Assembly, and it would seem natural that it should take the opportunity to circulate the list of signatures and ratifications with an individual reminder to every government whose ratification was required for September. The December meeting

again, as the first meeting to follow the Assembly, would be the natural time to investigate what effect had been given by delegates to the Assembly to the reminder sent out by the Council in June.

(e) *Ratification with Reservations*

As part of this subject may be mentioned the question of attaching conditions or reservations to ratification, as was done over the optional clause on compulsory jurisdiction of the Permanent Court by Brazil [1] and has frequently been done in labour conventions. This is unobjectionable if the conditions merely suspend the effects of ratification until other states also have adhered, but if the fulfilment of more or less irrelevant "collateral" conditions is demanded the effect may be to make ratification illusory. As for reservations to multilateral conventions, they are in principle permissible only if agreed to by the other signatories. To get over the difficulty of later adhesions League conventions generally stipulate that reservations shall be based on reciprocity, and be for a limited period, or subject to periodical review by the signatories, or confined to certain articles, or allowed only by the Council after consultation of the technical organization concerned. A whole new technique is growing up in these matters, for both League and labour conventions. The guiding rule is that a convention stipulates the performance of certain duties by the signatories, and the partial failure of one to fulfil its engagements affects their performance by the others. Hence reservations are the common concern of all the signatories and cannot be made by an individual state at its discretion.

(f) *Ratification and Registration*

The connexion between ratification and the process of registering treaties with the League as a condition for their coming into force, as well as between registration and the question of whether an agreement is in conformity with the Covenant, may also have to be considered some day. It will be remembered that the question of precisely what obligations were implied by the registration of treaties and what were the legal effects of non-fulfilment was left by the Second Assembly in a somewhat vague condition.[2] The question has been raised by the Yugoslav delegate in the Committee on Security and Arbitration, who suggested that when the Committee explored the ways of giving effect to various articles of the Covenant it should pay particular attention to this subject, in

[1] See above, p. 378. See also the discussion on "Reservations to Multilateral Conventions," by H. W. Malkin, in the *British Yearbook of International Law*, 1926, and Volume II.

[2] See above, pp. 173-174.

connexion with Articles XVIII. and XX.[1] There should be some way, he said, of ascertaining whether treaties really were in conformity with the Covenant before they were registered, and of demanding changes or declaring them invalid in so far as they were not compatible.

(g) *Conclusion*

Some day it may be found necessary to appoint a special committee to investigate the whole subject of government ratifications and League decisions from the point of view of speeding up the former and the connexion of the subject with Articles XVIII. and XX. of the Covenant, and the report of such a committee may well involve setting up some kind of permanent advisory body attached to the Council. If " following up " the ratification of conventions and checking their compatibility with the Covenant before registration are to become routine tasks of the Council, they should clearly be performed by an impartial advisory committee of experts and not by the Council itself.

CHANGING AND DENOUNCING TREATIES

A third question raised by the existence of the League is how to secure changes in treaties. Before the existence of the League, treaties—which were often secret and almost never discussed publicly—were deemed to be eternal, and in fact became obsolete and lapsed or were denounced or abrogated by war. Now the League has set its face against war as a method of changing treaties, and keeps alive and implements the latter by their registration and publication and the publicity surrounding their adoption and discussion at League meetings. One way out of the difficulty that is being adopted in modern treaties is to conclude them for a short period of years, after which either party, after giving due notice, can denounce the treaty. A further method is to provide for the treaties coming up periodically for revision. Further aspects of this question are so closely connected with the problem of peacefully changing the *status quo* that they had better be left to be taken with the discussion of that subject in Volume II., where it forms part of the chapters on " The Peaceful Settlement of Disputes, Security and Disarmament." [2]

[1] The text of these articles is given in Annex A, and the whole subject is further discussed in the chapters on " Peaceful Settlement of Disputes, Security and Disarmament " in Volume II.

[2] See also above, pp. 114, 347-349, below, p. 473, and *The League, The Protocol, and the Empire*, by Roth Williams.

THE LEAGUE MACHINE

The atmosphere in which the League works has now been touched upon as well as one or two of the problems, such as publicity and privacy and the ratification of League decisions, that are raised by its working. It now becomes necessary to consider the way the League works within these conditions. The working of the machinery as a whole may be illustrated by the following metaphor: the Assembly meeting once a year, including all the States Members of the League, reviewing the year's work, laying down the lines for future development, voting the budget, amending the Covenant and admitting new members, acts as the regulator of the pace and momentum of the League's work—it is the fly-wheel of the machine.

The Council, a small group of leading members of the League, meeting every three months or oftener to settle disputes and guide the activities of the technical, advisory and administrative organizations on the general lines and within the budgetary limits laid down by the Assembly, represents the steering-wheel.

The Technical and Advisory Organizations do the routine work under the supervision of the Council and on the basis of the resolutions of the Assembly. They are the cylinders and pistons.

The Secretariat, connecting the different parts of the machinery with each other, is the crank-shaft.

The Peace Treaty compromises (the Saar, Danzig, Minorities and Mandates), embodied in the administrative organizations and minorities procedure, play the part of shock-absorbers.

No analogy is perfect, and it will be observed that the above leaves no room for the Court, thus emphasizing the independence and somewhat aloof status of the latter. But it serves to give some idea of how the different parts of the League organization fit into each other and how the whole works. Those who wish may carry the analogy further by likening the governments to owner-drivers and public opinion to the petrol, the power without which the machine cannot run.

THE ASSEMBLY IN ACTION

Its Nature

Reference has already been made in Chapter VI.[1] to the fact that the Assembly is different from a special international conference owing to the larger size and more representative nature of

[1] See above, p. 138.

the delegations and because each meeting is the continuation of previous sessions and looks forward to future meetings. The Assembly is a more democratic and elastic body than a special conference. Its procedure is cumulative because continuous. Here it is necessary only to emphasize the importance of the Assembly as what might be described as a hot-bed or culture medium for ripening international ideas to the point of action. For purposes of analysis, as was pointed out in Chapter V., it is necessary to distinguish between opinion-forming and decision-taking machinery. But in practice things occur " mixed " and not pure, and the Assembly is at least as much an educational as an executive body.

SEMI-DEMOCRATIC CHARACTER

The Assembly is the Great Assize of the nations. The delegates who meet there each year represent most shades of opinion in most countries. As the majority of delegates come year after year, personal bonds are formed, and those who meet in the same committees dealing with the same questions at one Assembly after another begin to look upon each other as colleagues. A good many delegates belong to private organizations, such as the Labour and Socialist International, the Inter-Parliamentary Union, the Federation of League of Nations Societies, that have already been dealing internationally with a good many of the questions dealt with at the Assembly, and may actually bring up suggestions agreed upon with their colleagues from other countries in these bodies. Socialists, for instance, tend to form a group at the meetings of the Assembly for the purpose of exerting joint pressure on their delegations on certain questions where there exists an agreed Socialist policy in many countries.

Delegates are often given a fairly free hand on the different committees where the subjects dealt with are apt to require special knowledge and where the governments concerned are not vitally interested in any particular solution, but merely wish to help on the work. This applies particularly to the technical and humanitarian work, but holds good to some extent even of many phases of disarmament discussion or questions concerning minorities procedure, mandates, etc. In fact, on most questions there is a majority of " disinterested " governments—*i.e.* there is a certain fund of active common sense and good will on which the Assembly can draw.

Governments are, moreover, beginning to realize that the policy most likely to produce results at the Assembly is not one

of passivity except where a country's interests are directly concerned, coupled with ardent and unscrupulous advocacy on these questions, but of general activity in every branch of League work. A delegate who has shown himself a valuable member of the Assembly or Council by his work on committees or as rapporteur or in the general debate on some subject thereby gains a strong position for friendly consideration of his particular government's point of view on questions that concern it closely. A delegate who is unpopular or negligible internationally is generally a poor national advocate.

THE PERSONAL FACTOR

In other words, the personal factor is a most important element, more important for the small states than the great (since the delegate of a Great Power will be listened to even if he is stupid, whereas a small Power in that case ceases to count completely), but important also for the Great Powers. There is, in fact, a certain League technique growing up which is more like co-operation between colleagues and less like verbal fencing between rival advocates than the spirit imbuing the old diplomacy. A great proportion of the delegates are, indeed, parliamentarians or technicians, and those who are diplomats have had to adapt themselves to the new conditions.

THE ASSEMBLY AND SPECIAL CONFERENCES

Matters are not only put on the agenda months before by governments notifying the Secretariat, but in practice may be added by some resolution arising out of the debate on the Secretary-General's report. This is particularly the case where the Assembly deals year after year with certain standing questions, such as disarmament, arbitration and security, the work of the technical organizations, etc. That is, it is not only possible to carry matters already on the agenda a stage further, while leaving the way open for final consideration by governments at a special conference, but proposals looking to future action and not binding any government immediately may also be initiated at the Assembly itself. In this way questions can gradually ripen within the Assembly from the stage where they merely occur as an idea to one or two advanced delegates to the point where they are ready for joint action by all the governments. The Assembly's method is slower but more comprehensive and stable than that of a special conference. The rôle of a special conference, in fact, begins where the Assembly leaves off—that is, an Assembly resolution goes through the mill of committees, Council and

consideration by governments, until there is a draft convention or some equally concrete proposal, which is then referred by a future Assembly for final action by the governments at a special conference.

THE ASSEMBLY AND CONVENTIONS

This is the general procedure usually followed by the Assembly. Professor Philip Baker has advanced strong reasons for changing this procedure and making it the rule that the final discussion and signature of conventions should take place at the Assembly itself.[1] The Assembly indeed has the right to conclude conventions, and has adopted this practice on several occasions. The first time this occurred was at the Second Assembly, in September 1921,[2] which turned the final act of the international conference on the Traffic in Women and Children into a convention and invited the governments to authorize their delegates to sign it. The French Delegation objected at the time that this was beyond the powers of the Assembly, but the objection was refuted and overborne, Lord (then Mr) Balfour pointing out unanswerably that the Assembly delegates represented their governments and could do whatever their governments instructed them to do. Another case was the Slavery Convention, concluded by the Seventh Assembly on the basis of a draft prepared by the Sixth and sent out to the governments for their opinions.

The Assembly of course, as Lord Balfour pointed out, being a body of government delegates, can do anything the governments choose, subject to the terms of the Covenant, which is nothing if not elastic ; but in practice the tendency hitherto has been to leave special work—such as drafting or concluding conventions—to delegates who are specialists and who receive special instructions and deal with nothing else (*i.e.* who meet in a special conference). The Assembly, with its wide range of subjects and big delegations composed largely of politicians, deals with questions in a "general" way. But this, it must be emphasized, is a question of practical convenience and not of constitutional powers. The discussions of the Assembly are valuable precisely because behind them lurks the power if need be to decide, just as its decisions are authoritative in the degree to which the delegations sent by the governments are representative of opinion in their countries.

[1] See above, pp. 461-462.

[2] For the framing of the Statute of the Court and the Protocol of Signature attached to this Statute at the First Assembly may be considered a special case; see above, p. 368.

HOW THE COUNCIL WORKS

The Nature of International Disputes

To understand how the Council works in settling political disputes it is necessary to consider the nature of such disputes in the world to-day. At bottom, political disputes almost always represent attempts to change the existing state of things. Because nations are living in a state of anarchy, they transact business with each other by bargains, deals and *quid pro quo* arrangements of various kinds, like barter trade between savage tribes. When this process runs smoothly we have the ordinary working of diplomacy. When there is a hitch we have a dispute or crisis. If the dispute or crisis is pushed far enough it is apt to spill over into war. In other words, international relations are to-day unorganized and anarchic, and, consequently, international disputes are usually not confined to questions of law or fact, but occur as a tangle of economic, political, legal and factual issues. The settlement of such disputes, while it may include giving verdicts on issues of law and fact or adjusting competing claims, means at bottom making international changes that involve international co-operation, government action, compromises between governments, and so forth.

Thus the settlement of the Aaland Islands dispute meant a pledge by the Finnish Government to give a wider measure of autonomy to the Aaland islanders, and an undertaking by ten governments to respect and guarantee a certain form of neutralization of the Aaland Islands.[1] Here a dispute involved a measure of international reconstruction. Contrariwise, measures of reconstruction may involve disputes. Thus the Austrian loan scheme, although primarily concerned with the financial rehabilitation of Austria, also involved settling an acute conflict between Italy and the Little Entente as to the respective relations of these countries to Austria.[1] The case of Hungary[1] was similar, but worse, and involved the clearing up of a great number of disputes, misunderstandings and grievances.

Analysis and Synthesis

Through the League system an attempt is being made to introduce elements of order and the beginnings of organization into the tangled anarchy of international affairs, by providing machinery through which international disputes can be analysed into their elements and each dealt with by the appropriate body. Thus through the Court and its boards of technical assessors, as well as arbitration and conciliation commissions and League technical

[1] See Volume II.

committees, matters of law and fact can be dealt with, and disputes arising out of a desire to change things be transmuted into schemes of compromise and co-operation to effect the changes desired. But it is essential that a group of governments—both those interested in the matter at issue and those interested only in getting a stable settlement—should remain the centre of this process of reducing a dispute to its elements and then building them up again as an agreed scheme, so long as governments remain the centres of power and authority in their respective countries. Otherwise, indeed, the process could not be got under way, for it consists in pledging governments to action. The Court could have settled the question of Finnish sovereignty over the Aaland Islands but could scarcely have gone on to suggest schemes for granting additional rights and safeguards to the islanders and drafting a neutrality convention. It took a commission of inquiry to propose such a solution and a group of governments like the Council to persuade Finland and Sweden to receive the commission and accept its proposals.

MEDIATION, ARBITRATION, LEGISLATION

The nature of its functions explains why most disputes settled by the Council have left some form of international organization or supervision as a "residue" of the settlement, as pointed out above.[1] In other words, the Council is neither a mediatory body nor an arbitral tribunal, but a rudimentary legislative organ. Or to be more accurate, the Council under Article XI. of the Covenant acts as a mediatory body—mediation in fact under this article has been raised to the dignity of a statutory right—and acts as an arbitral tribunal under Article XV. when the parties concerned declare beforehand that they will accept the Council's decision; but acts as a body *sui generis* and in a way new to international law in the regular procedure under Article XV. This way has features resembling mediation, arbitration and legislation in turn, and corresponds to the inchoate state of international relations at present.[2]

[1] P. 116.

[2] For a full discussion of the League's procedure in the peaceful settlement of disputes see Volume II. *Cf.* also Westlake: "These three classes [where political action is justifiable because there is no rule of law, or opinion is outgrowing a rule, or there is only an imperfect right] correspond to the cases arising in the internal affairs of a state in which the action of the legislature is required to supplement, to amend or to define those rules of law which the judicature has to apply, or to give relief in particular cases where sufficient definition is impossible. Action in them by a state is political just as the action of a legislature is political. It stands towards international law, considered as a body of rules, that is as positive, very much as the action of parliament stands towards the law of the land. If the action is taken not by a single state but by a congress, the analogy is as close as it can be,

SPECIALIZATION OF FUNCTIONS AND MACHINERY

The necessity of having some definite centre and focus of League authority and League activity must not be lost sight of, and though decentralization as League activities multiply is inevitable, as has been pointed out above,[1] there are limits to the process and the Assembly and Council must remain the two poles on which the whole system turns. Nevertheless, as international relations develop, some of the functions combined in the Council will separate out and be entrusted to special organs. This tendency is already noticeable as regards the peaceful settlement of disputes. Judicial questions are in practice handed over to the Court and the Court's award accepted, although the dispute in which they were included may have been referred to the Council. The compulsory jurisdiction of the Court is being extended to a widening number of states and questions. An increasing number of conciliation and arbitration treaties refer disputes to special committees or tribunals or to the Court, with the Council under Article XV. kept as a last resort when conciliation in non-justiciable disputes has failed, or as a peace-keeping organ under Articles XIII. and XVI. of the Covenant. That is, the Council is more and more being assigned the rule of seeing that the parties fulfil loyally the obligation they have undertaken to settle their disputes by conciliation or arbitration or judicial settlement, and is called in only to deal with a threat of rupture or other danger to peace.

The same tendency is noticeable in the Council's own methods of handling disputes, as has already been indicated.[2] Here too the Council tends more and more to keep itself in reserve as a body for focussing the political authority of the League on the disputants in order to make them accept a solution recommended by, *e.g.*, an expert commission, strengthened in its legal aspect by an advisory opinion from the Court and supplemented by negotiation between the parties, in the presence of the representatives of one or more disinterested states (the rapporteur or special subcommittee of the Council). The more extensive use of the Council committee system—on the analogy of the Austrian, Hungarian, Greek, etc., committees of the Council—is almost sure to result from the enlargement of the Council and multiplication of the League's activities, as pointed out above,[3] and will accelerate this

having regard to the different conditions under which law exists among states having no common government. Till 'the parliament of man' becomes a fact, states have to do for themselves what parliaments do for individuals" (*Op. cit.*, vol. i., pp. 301-302).

[1] See pp. 131-132. [2] See above, p. 157. [3] See p. 157.

development in the technique of the Council, and tend more and more to isolate the " legislative " side of the Council's work from the other aspects of its activity.[1]

In general, as the League develops there will be greater and more varied possibilities for satisfying the desire for change directly by minorities, tariff, and transit arrangements, special regimes for certain areas, through direct negotiation, internal legislation and international finance, using the machinery of the League to a greater or less extent, but as a rule without waiting until such questions degenerate into disputes—particularly disputes involving the danger of a rupture.[2]

THE COUNCIL AND JUDICIAL PROCEDURE

It is arguable that the Council has not paid enough attention to the legal aspect of disputes. Its handling of the Roumano-Hungarian dispute in 1927 was criticized from this point of view: it was alleged that the Council was too fond of appointing jurists of its own to advise it on legal questions, instead of referring to the Court for an opinion, and also that it was not sufficiently careful to respect the rights and prerogatives of arbitral tribunals, but seemed in some measure to consider itself, although a political body, competent to discuss legal points such as the jurisdiction of arbitral tribunals and the correctness of their awards. To this it may be replied that when the Council is dealing with a dispute it becomes responsible for the settlement of that dispute. The question of whether any particular point involved is sufficiently important to refer to the Court for an advisory opinion or whether the Council will take the risk of getting an opinion from its own jurists (for a jurist's opinion is always open to the risk of being contested by the party to which it is disagreeable, which is not the case with the Court) must be left to the discretion of the Council. As regards the question of alleged infringement of the rights of arbitral tribunals, it is so closely connected with the nature of the particular dispute that the two things must be considered together.[3] It may be noted, however, that in connexion with the " Salamis " case between Germany and Greece[4] the Council at its session of December 1927

[1] The Council Committees dealing with reconstruction schemes or supervising the constructive activities of the technical and advisory organizations, or dealing in a " preventive " and half-informal manner with conflicting claims before they can blossom out into full-blown disputes (*e.g.*, Committee of Three on Minorities Questions), will be promoting international change by peaceful means—*i.e.* the " legislative " activities of the League.

[2] See the discussion on changing the *status quo* without war in the chapter on " Peaceful Settlement of Disputes " in Volume II., and above, pp. 347-349, 365.

[3] See the chapters on " The Settlement of Disputes by the Council " in Volume II.

[4] Described in Volume II.

laid down a general rule which would seem to provide fairly satisfactorily for its relation to arbitral tribunals. The text adopted by the Council reads as follows:

> "It will not be contested that as a general principle and in the absence of some special attribution of competence the Council should not intervene in a question pending before another international organ such as a Mixed Arbitral Tribunal when (*a*) the request for the Council's intervention is made by only one of the parties, and (*b*) the case is being dealt with by that international organ with the consent of both parties and is regarded by it as within its competence. If this rule were not followed as a general principle the position of all international tribunals would be prejudiced and an intolerable burden would be imposed on the Council of the League of Nations."

It should never be forgotten, however, that the Council is not an arbitral tribunal to which the governments have handed over a question, but is a group of the governments themselves, both the governments parties to the dispute and governments whose only concern in the matter is to bring about a peaceful settlement. This is exactly what distinguishes the Council's procedure from any previous methods of handling disputes.

The failure to realize the peculiar nature of the Council's status and functions in handling disputes, and the complex factors that go to make up political disputes, is illustrated in the complaints and disapproving remarks scattered throughout the volumes of Miss Frances Kellor's book *Security against War*. Treating the Council as an arbitral tribunal the author cannot understand why the League should constitute itself "residuary legatee" in the disputes it settles—and what she is unable to understand she refuses to forgive, thus negatively illustrating the truth of the well-known French proverb. Another illustration is afforded by no less a savant than Dr James Brown Scott of the Carnegie Endowment, who adopts the view that the problem of how to conduct international relations successfully in our interdependent world may be reduced to the peaceful settlement of disputes, and that all disputes are susceptible of judicial settlement.[1] The same error in a cruder and more popular form is behind the American movement for the "codification of international law" and the "outlawry of war." The common feature of all three is an immense exaggeration, from

[1] This would appear to be the implication of the lengthy lecture delivered by Dr Scott before the Geneva Institute of International Relations in August 1926 on "The Settlement of Inter-State Disputes in America" and reported in volume one of the Proceedings of the Institute (also issued as a reprint, referred to *passim* in Chapter X.). It is also consonant with Dr Scott's general attitude on international affairs in general and the League in particular, as expressed in his books, articles and public activities. See above, pp. 385-386, 408-409.

the non-American point of view,[1] of the importance of an international court, either the existing court or some other, coupled with complete inability to see that political disputes are not always and primarily a conflict between rights and wrongs but frequently between the desire for change and the desire to maintain the *status quo* ; that no courts can deal with such disputes and that solutions when they take the form of compromise through international arrangements are analogous rather to legislation than to litigation in the national field.

JUDICIAL PROCEDURE AND POLITICAL ORGANIZATION

Thus Miss Kellor and Dr Scott and the outlawry of war school are fond of drawing a comparison between the Supreme Court of the United States and their ideal international court, and of suggesting that all the world needs to get rid of war is such a court. But is it conceivable that a court would have been set up and maintained without first the Articles of Confederation and then the Constitution of the United States? Is it possible to separate the reign of law from political organization? Has the former ever in the world's history occurred where the latter did not exist? [2] And how would the United States have got along with only a Supreme Court and without Congress or the Administration? What has been the part played by the Supreme Court in the abolition of slavery, the long-fought battle between the " States' rights " and powers of the Union schools of political thought in the States, or in regulating the relations between labour and capital, curbing the power of big economic combines or dealing with such problems as interstate transport and commerce? These are the kind of problems in the history of the United States which are more nearly analogous to " changing the *status quo* " disputes in the League, and surely experience has shown that in such matters a court is as often irrelevant or obstructive (because favouring an obsolete particularism) as it is helpful.[3]

The Society of Nations needs its Permanent Court, and as we

[1] For the significance of the movement from the point of view of American " politics " see the chapter on " The United States " in Volume III. See also above, pp. 328-331, and Volume II.

[2] It may possibly be replied that the court set up by the Central American States was such an instance. But this court was set up as part of an attempt to establish political organization between these states, and failed owing to the operation of much the same forces as led to the abandonment of the attempt at political organization.

[3] To this, again, it may be replied that courts have been a bulwark of the liberties of the subject against potential tyranny by the executive and legislature. This, of course, is perfectly true, but the fact that organized society without a court would be tyrannical is no argument for saying that a court without an executive and legislature would make organized society possible.

have seen [1] it is only a question of time until that court becomes endowed with compulsory jurisdiction. But the Society of Nations, like any other human society, could not function without something corresponding to the legislature and executive of a national state or federation of states—with the difference implied by the fact that the Society of Nations is not a federal state but a confederation or association of states of a peculiar and unprecedented nature.[2]

TECHNICAL CO-OPERATION

Technical Co-operation and Prevention of War

Closely connected with the misconception of the nature of international disputes that has just been discussed is the belief that the League's activities in the field of economics, transport, public health, the opium traffic, suppression of the traffic in women and children, etc., are a waste of time and effort, in that they distract the League's attention from the central task of preventing war. The prevention of war is thought of as a specific and exclusive function, like digging potatoes or swimming the Channel. The truth is, of course, that the more nations work together, and grow to depend on each other in certain matters, the more likely they are to come to agreement on other questions, and so the less likely to strain their relations to the danger-point. Joint action between nations in questions of public health, control of the opium traffic, etc., is not only worth while because it lessens the sum-total of human suffering, but is indirectly valuable in that it strengthens the machinery and habits of co-operation and induces mutual confidence and good feeling. In proportion as States Members of the League realize their pledges under the Covenant to establish equitable tariff, trading and transport conditions, harbour and waterway rights, etc., among themselves, the danger of war over such things as right of access to the sea, trade routes, raw materials and markets will be obviated. If the terms of the mandates are faithfully carried out the same applies to colonial conditions, and if national minorities are treated with such fairness that they become loyal and contented citizens there will be no incentive to irredentist wars.

Technicians and Diplomats, Private Persons and Governments

It was this view—first and most authoritatively put forward by Lord Robert Cecil and General Smuts—of how to lay a firm foundation for peace that led to international co-operation oc-

[1] See above, p. 388. [2] See above, pp. 343-344, and below, pp. 482-486.

cupying the prominent place it does in the Covenant and practice of the League. The result has been that through the League civil servants and technicians from government departments in different countries, as well as railwaymen, bankers, business men, and experts of all kinds, are for the first time being brought into touch with each other and with the governments on international work that brings out the common interests of their respective states and pushes political considerations into the background. Broadly, it may be said that the representatives of states or private organizations meeting in the technical organizations represent a more modern mentality and point of view than professional diplomats. The former look at things from the point of view of their profession and are ready to welcome people of the same profession from other countries as colleagues engaged on a common task, whereas the latter are trained in a school that tends to regard states as independent and mutually hostile entities whose representatives are engaged in a sort of permanent duel or combat to snatch advantages at each other's expense.[1] This generalization must, of course, be

[1] *Cf.* Laski, *A Grammar of Politics*, pp. 618-619:

" It is possible, I have urged, for governments to co-operate in settling large economic questions. That settlement will probably be best effected, not by an executive body, but by the co-ordinated consultation of those in the separate States who are responsible for the political action involved. In general, it is best that such consultation should take place, not, as in the older diplomacy, through the medium of Foreign Offices, but through direct connexion between the specialized departments. The British Board of Trade should deal directly with the French Ministry of Commerce; the Italian Minister of Agriculture should concert measures with the German Minister of Agriculture. Direct connexion entails permanent institutions of contact. It is not enough to have occasional meetings of heads of departments. The responsible permanent personnel must learn to know each other intimately, to feel out each other's minds, to gather from these continuous relations the ability to apply a sense of international need to the work of their own States. That involves, as Sir Arthur Salter has rightly insisted, the growth between officials of a confidence great enough to enable them ' to discuss policy frankly in its earlier stages, and before it has been formed and formulated in their respective countries.' For, thereby, we avoid the danger of implicating in discussion the prestige of an administration; we prevent it from having to give way in the public view. We get the basis of a common decision reached before governments have committed themselves to one view or another. No officials, of course, can, or should, commit their respective countries; but when the margins of agreement are known, it becomes a far easier matter to settle the powers to be conferred upon officials who make the solutions in terms of principles of which the limits are fairly well defined. Meetings of governments then become official occasions sanctioning plans of which the outlines are already organized. And the plans so made may become instinct with a spirit of internationalism simply by the way in which officials, through their personal contact, have learned to realize and weigh other points of view.

" I emphasize the importance of contact outside the Foreign Offices of State. I believe it is of real urgency in building up such a method of international administration to multiply the sources of contact between States. The more we can localize action, the more it can be dealt with in terms, not of prestige, but of technique, the greater is the opportunity for the growth of technique. The normal channels of diplomacy centralize issues in a way of which the consequences may come to possess far more significance than is warranted. A problem of oil in

applied, like all generalizations, with caution—on the one hand modern diplomacy takes increasing account of economic interdependence, and on the other nationalism afflicts even technicians on occasion. Moreover, where the object of the work in hand is to abolish the technician's job (*i.e.* armaments, passports, to some extent control of the traffic in opium and dangerous drugs), the technician tends to have a vested interest in the abuse under discussion; he should then be used as an expert adviser, and the real work should be done by a politician.[1] But it is nevertheless an important psychological fact that new classes of the community are being drawn into international work and are bringing into it a new point of view on international relations.

GROWTH OF THE ADVISORY AND TECHNICAL ORGANIZATIONS

As the advisory and technical organizations have developed their full machinery of permanent expert committees and sections of the Secretariat, together with recurrent conferences, they have tended to grow independent of the Assembly and Council, although confined by the budgetary limits and guided by the general direction and impulse to their activities given by the former. The Assembly and Council act as a general centralizing and stimulating machinery that brings all the technical organizations to the attention of public opinion and of the governments at regular intervals, establishes contacts between them and facilitates the holding of special conferences for final action. But the work of the technical committees is becoming more and more specialized along the lines laid down at their inception and the members of the committees have acquired the confidence of the governments members of the League. The consequence is that the supervision of the Council tends to be a formality and the Assembly refrains from going into the details of the work.

STATUS OF THE ADVISORY AND TECHNICAL COMMITTEES

Within the advisory and technical committees there has been a similar evolution, resulting in the curious semi-expert, semi-governmental status of these bodies. In theory the members of some of the committees (*i.e.* Financial and Health) are experts

Downing Street may easily loom larger than it looms in Whitehall. Technique keeps the trivial in its right perspective. If a Foreign Office is brought in to grapple with a dispute about railways, almost inevitably a hinterland of discussion beyond railways begins to pervade the atmosphere. And to keep discussion technical has the great additional advantage of keeping it undramatic. It cannot easily be made a journalistic sensation. It cannot be surrounded with that miasma of report and scandal which have poisoned so many international conferences in the last few years. It makes the notion of a triumph much less accessible when, *a priori*, the nature of the triumph is not intelligible enough to be news."

[1] For examples see Volume II.

appointed by and responsible to the Council, while others (*i.e.* Transit and Opium) are representatives appointed by their governments, which have themselves been elected to the committee by a conference or designated by the Council. In practice, however, the experts are nominated by the Council, itself a group of governments, in consultation with the governments concerned in order to find authoritative representatives of, *e.g.*, health departments or finance ministries and central banks. Moreover, the work done by these experts is intergovernmental work, which sooner or later is to result in draft conventions for submission at special government conferences or in some other way involves direct government action. On the other hand, the governments represented, for instance, in the Transit Committee, appoint permanent civil servants of their Ministry of Ways and Communications, or some similar body, and give them a fairly free hand to act as experts. The members of the committees thus soon become personally acquainted and develop a collective *esprit de corps*.

Function of the Committees

In the upshot all these committees become bodies for working out plans for practical action to facilitate interstate relations at some point, and tackle their problems, not as diplomats defending rival national policies, nor as theoretical experts working out ideal solutions on paper, but as responsible representatives of some great permanent, non-political, "trans-national" aspect of state life, bent on finding some feasible plan that they believe they can induce their governments to accept. The plan so adopted is eventually put up to the governments as a draft convention, or in some other form, for adoption at a special conference or in the Assembly.

An Example

A concrete case will show the general working of the League system in international co-operation. The holding of a special conference to draw up a European railway convention in the autumn of 1923 was decided upon by the Third Assembly (September 1922), when voting the 1923 budget. The first step was the collection of information by the officials of the Transit Section of the Secretariat. The next step was the consultation of private railway experts and of government railway officials for an examination of the question from both the theoretical and practical aspects. A scheme was then submitted to the full Transit Committee, composed of government officials and representatives of

big private organizations, representing every phase of Europe's transit problems. This committee drew up a draft convention which was circulated to all the governments concerned, together with a report embodying the relevant facts, three months before the date of holding the Conference.

The governments were thus furnished with a basis for discussion, with all the necessary information, and with plenty of time to think out what their attitude should be and what representatives they should send to the conference that was to frame a railway convention. The conference was duly held, and resulted in a convention which is now in force.

At every step of the preparations for the railway conference there was the possibility, through the Secretariat and members of the committee, of " sounding " the governments concerned, forestalling difficulties, telling one government what another was likely to do in certain contingencies, and so forth. There was also the checking of the main phases of the process by the Council, as well as sufficient publicity to ensure a receptive and intelligent public opinion. These methods—constituting a sort of international " follow-up " system—have a solvent effect on stubborn and obstructive governments, and ensure a conference working smoothly and producing results when it is held.

The method works well on the whole, but needs improvement at one important point, as has already been pointed out,[1] and that is in securing more speedy ratification by governments.

Some League conventions provide for the governments concerned giving information at regular intervals on how the provisions of the convention are being executed, and a good many indicate the technical committee dealing with the activity covered by the convention as a mediatory body in case of disputes arising out of the convention, with the Permanent Court as the final court of appeal on questions of fact or interpretation.

THE RÔLE OF THE SECRETARIAT-GENERAL

Relation to Committees and Experts

In general, and with the differences already noted in Chapter VII.,[2] the rôle of the Secretariat in League work may be compared to that of a national civil service. The Secretariat prepares questions to be dealt with by experts or technical committees or conferences of the Council and Assembly. Experts are often called in by the Secretary-General, on the advice of the section concerned,

[1] See pp. 461-462 above.

[2] See above, p. 198.

to give their opinion on the matter in hand. They are, that is, to some extent in the position of being temporarily employed by the Secretariat to strengthen its staff on some point.[1] Members of sub-committees or committees appointed by the Council are in a somewhat different position theoretically, for they are employing the Secretariat. In practice the difference is hardly noticeable, for in both cases the Secretariat and experts or members of committees work together as colleagues, but members of the Secretariat are always simply international officials and civil servants, while the experts or members of committees take some account of the fact that they have states at their back.

THE ADVANTAGES OF PERMANENCE

A member of the Secretariat, for instance the director of a technical section, has the great advantage of permanence in dealing with any question: he sees it through all the stages of experts, sub-committees, full committee, Council, Assembly and special conference, and is able at any one stage to uphold his view by reference to the wishes or intentions of the League body dealing with some other stage. He can deal with the experts by referring them to the terms of the Assembly resolution, initiating a line of work (a resolution which he may have had a hand in compiling through the proper Assembly committee); he deals with the sub-committee or committee by referring to the wishes of both the Council and Assembly, and with the Council by referring to the technical opinions of the experts, sub-committees and committee, as well as the resolution of the Assembly, and so forth. All this requires considerable skill in " presentation " and persuasion, but it is remarkable what a capable and energetic director with a strong section at his back can accomplish in the way of pushing through his ideas.

PROCEDURE

The usual method of approach when a question is taken up is through the head of the section concerned and the senior official of the nationality of the state interested. If, for instance, state A is interested in question *x*, it is prepared in the Secretariat by the section dealing with question *x* in consultation with the senior official of nationality A. The task of senior officials is therefore often to talk League to their governments and explain the Government point of view to their colleagues in the Secretariat.

The Secretariat has, therefore, an unwritten but most important

[1] In addition temporary staff is often recruited for some special purpose—*e.g.*, to the Economic Section to help to prepare for the Economic Conference held in May 1927.

rôle as intermediary and go-between in the proceedings of League meetings—which is one of the reasons why League conferences are different from ordinary conferences. It is very important to have at the centre of things a body of civil servants with a strong corporate sense of loyalty to the League as a whole, to prepare all questions and talk matters over privately with delegates. The members of the Secretariat keep in close touch with each other, " prime " delegates with information and proposals, bring cross-currents to bear by putting, for instance, a Little Entente delegate in touch with a senior French official, and a Hungarian or Austrian with a German, or by arranging lunches, dinners or private interviews between appropriate delegates in the presence of one or two officials best calculated to produce an impression, and so forth. There is a great deal of lobbying, and manœuvring, coaching of delegates, drafting of resolutions, planning of campaigns to get some point through the Second Committee (if a technical question), or the Fifth (if a humanitarian question), or Sixth (if a political question, such as mandates, minorities, etc.), and the Fourth or Budget Committee. The full story of the part played by the Secretariat in the growth and work of the League will probably never be written until some member of the Secretariat reaches the retirement and memoir-publishing stage, but that it is important is obvious to anyone who takes more than a superficial interest in the proceedings of one or two big League meetings.

CONCLUSION

To sum up, it may be said that for purposes of analysis the League's technique is based on two principles—that of the clearing house and that of the round table—and comprises three kinds of machinery—namely, that for the settlement of disputes, for co-operation in certain non-political subjects, and for carrying out special tasks (such as international administration, supervision of mandates, and protection of ethnic minorities). But it should not be forgotten that the various parts of the machinery interlock and that the system works as a whole, so that any question dealt with through the League may involve the application of both the principles on which League technique is based and the employment of all three kinds of machinery. Getting the governments together in conferences is the application of the round-table principle: preparing, collecting and distributing information through the technical organizations and the Secretariat is the application of the clearing-house principle.

The whole constitutes a sort of continuous, loose, organic relationship between a number of independent states, something more than sporadic international conferences, and a frank recognition of the fact that isolation is impossible in the modern world, but not a federation of nations and very different from any attempt at a world state. The League's activities, indeed, steer a practical middle course between the futility of the debating club and the pretensions of a would-be super-state, which is why the League is accused (sometimes by the same people) of being both, although it is neither.

It has been compared by good authorities to both a confederation and permanent alliance, while others equally good have rejected both descriptions and called it an association of states of a unique and unprecedented nature. Thus to Lord Birkenhead it is " a union of a kind that has never before been in existence, an international person *sui generis*, nothing other than the organized Family of Nations." [1]

In the eyes of Schücking and Wehberg it is a " world-wide political collective being (Gemeinwesen)," a " political union with a life of its own because it has been endowed with organs of its own," " the political organization of the civilized world." [2]

Hall writes: " On the whole, the League appears most nearly to approach the features of a confederation as apart from its constituent members it possesses rights and duties: it may therefore be ranked as one of a special type rather than as an international person *sui generis*." [3]

The matter has, perhaps, been put most intelligibly for laymen by Professor W. E. Rappard, who, while also a jurist of repute, was for five years a high official of the Secretariat and is chiefly concerned with the League as a practical worker:

" If by a super-state we understand a political entity whose sovereignty overrides that of its component parts, the League is of course nothing of the kind. The states members of the League of Nations enjoy a far greater measure of independence than do, for instance, the so-called sovereign cantons of the Swiss Confederation. It would, however, . . . be equally erroneous as a statement of fact, and unfortunate as a forecast of policy, to declare that the foundation of the League had exercised and would exercise no influence whatever on the status of its members, but merely offered them new possibilities of international co-operation. The British Dominions . . . are free and equal members of the British Commonwealth of Nations. . . . Does it follow that we must look upon the British Empire as nothing more than a method of international co-

[1] *International Law*, 6th edition, p. 62.
[2] *Die Satzung des Völkerbundes*, 2nd edition, p. 86.
[3] Hall's *International Law*, 8th edition, p. 32.

operation and not as being in itself a legal entity and a political reality of the greatest importance? So with the League of Nations. Much less than an all-powerful super-state, much more than a mere international letter-box, it is a Commonwealth. Its authority, ill-defined but none the less real, reflects the fundamental interdependence of its members and rests at bottom on their inability to stand alone and on their common will to pursue in common common aims." [1]

Another jurist who has also had long practical experience as a distinguished member of the Secretariat, Professor Manley O. Hudson, however, forcefully and persuasively puts the very point of view rejected in the passage just quoted as follows:

" I suppose it was inevitable that as soon as the League of Nations was organized it should be invested in popular opinion with a distinct personality. People at once began to think of it as a political entity comparable in a larger way with the states which were its members. In some parts of the world there were those who condemned it as a super-state threatening to undermine the prized sovereignty and independence of national states, while others welcomed it as a super-state which might in time be guided by a world opinion which would organize itself independently of the prevailing nationalism. . . . Now I submit that for a truer view of the League of Nations we must regard it, not as a new political entity created in a world of states, not as having a political personality of its own, not as a state in itself, but as a new method which has been adopted by the existing states for co-operating to meet those needs of world society which cannot be met by national action. The League is not a new power erected to see that righteousness prevails throughout the world; it is not an independent state which goes behind the governments of national states to their peoples for its constituency; it is not a governmental agency with an unlimited mandate to maintain the world's peace. It is merely a device by which certain nations have undertaken to co-operate in their efforts to solve some of the problems which they have in common, and to protect the interests of the larger world community as they are viewed by peoples each of whom would jealously guard its own national existence. It is, in short, a method of co-operation, a way of living together for the states of the modern world. . . .

" If the future holds in store some sort of world government which does not depend on national governments, I find it impossible to discover any indication of it now. The War has intensified rather than diminished the spirit of nationalism, and at the present time it would seem that progress in organizing world society depends upon the collaboration of national governments." [2]

Professor Hudson adds that:

" This does not refer to certain legal theories of the nature of the League of Nations, which may be invented to enable certain things to be done. For instance, property in Geneva has been acquired by the League of Nations as such, and to this extent it may be classed as a corporation." [2]

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[1] In "The Evolution of the League," appearing in *The Problems of Peace*, 2nd series (Proceedings of the Geneva Institute of International Relations, 1927, Oxford University Press).

[2] In *Current International Co-operation*, Calcutta University Readership Lectures, 1927, pp. 33, 35-37.

At any rate, whatever its nature, and however it may be described, the League exists, has been in operation for close on a decade, and, failing world war or revolution and the collapse of civilization, will remain and grow. The forms will change, but the fact has been accomplished. And it is a vast fact, whose spreading consequences will shape human destinies as far ahead as we can see. The League of Nations, indeed, is no less than the beginning of the last and greatest stage in social integration, the nucleus of a world polity.

Since the end of the world war an increasing number of states have been groping their way, in a fumbling, uncertain manner and for the most part unconsciously, toward a new and larger synthesis of mankind, within which the seeming opposites of order and change, unity and independence, should be reconciled. We have come through the family to the clan, from the clan to the tribe, thence to the nation, and now, through the most frightful upheaval that civilization has ever survived, we have received a stern warning that it is time to take the next step. The League is that next step—or, shall we say, it is humanity getting a foothold in order to take the next step?

It used to be believed that world peace could be achieved only through world conquest and world unity under the authority of the Pope and the Emperor—the model was the Roman Empire. Of late forward-looking men and women have dreamed of a federation of nations, a sort of United States of the World, or at least of Europe, with Switzerland and the existing United States as the models. It may be doubted whether we are actually moving in this direction or whether there are any signs of our doing so in the immediate future. At present it looks rather as if through association we were going to get a future organization of the world on the model of the independent nations within the British Commonwealth, or of the relations between the three Scandinavian states, with local " thickenings " of the universal texture in areas or spheres where international interdependence makes itself particularly felt—not a world state, but the disappearance or international pooling of many of the powers we consider essential to statehood or, conversely, the prerogative of the individual.

What forms this association will ultimately take, and what will happen to the idea of sovereignty as it grows, it is difficult to say. In proportion as the war mind dies out, and inflamed nationalism is recognized for the poisonous and anachronistic thing it is, the

elements of sanctions and guarantees against attack may be expected to weaken and drop into the background, for with the habit of peaceful settlement of disputes universally established, and armaments drastically reduced, coercion would appear increasingly superfluous and the family of nations appear more and more as a world community whose joint forces need not be organized for the contingency of civil war. There might be local federations or compromises between federation and association rather like the old *Ausgleich* in the Austro-Hungarian Empire, the proposed economic union between Latvia and Esthonia,[1] or the abortive " Hymans Proposal " for associating Poland and Lithuania.[1] If we move from the present monist to a dualist or pluralist organization of the state with, for instance, a supreme economic as well as a supreme political authority, we might have not only the governments, but the supreme economic organs also directly linked up. Possibly autonomous boards may, on the basis of international conventions, run questions of through traffic, world public health, rationing of raw materials, etc., on the analogy of the International Postal Union.

All these and other possibilities might occur in the course of trying to imagine how humanity could be organized in a world society where men's minds would be released from the stupid obsession of mutual carnage and busy with achievements and dreams beyond our ken. But we must avoid dogmatism about the distant future. Let us solve problems as they arise, with a dim general idea of whither we are going and a lively sense of the black gulf that yearns at our feet if we stray from the path or try to lie down and go to sleep beside it. But let us not attempt, on the basis of our imperfect knowledge and poor imaginations, to prescribe the decisions that may be taken by happier and wiser generations. We who lived through the world war may aspire to leave these possibilities to our children, but can only pray that they will turn them into realities in their own way.

[1] See Volume II.

ANNEX A

THE COVENANT OF THE LEAGUE OF NATIONS

THE HIGH CONTRACTING PARTIES,

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments,

and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

Agree to this Covenant of the League of Nations.

ARTICLE I.—1. The original members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

2. Any fully self-governing State, Dominion or Colony not named in the Annex may become a member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

3. Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

ARTICLE II.—The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

ARTICLE III.—1. The Assembly shall consist of representatives of the Members of the League.

2. The Assembly shall meet at stated intervals and from time to time as occasion may require at the seat of the League or at such other place as may be decided upon.

3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

4. At meetings of the Assembly, each Member of the League shall have one vote, and may have not more than three Representatives.

ARTICLE IV.—1. The Council shall consist of Representatives of the Principal Allied and Associated Powers,[1] together with Representatives of four other Members of the League. These four Members of the League shall be selected

[1] The Principal Allied and Associated Powers are the following: The United States of America, the British Empire, France, Italy and Japan (see Preamble of the Treaty of Peace with Germany).

by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be Members of the Council.

2. With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be Members of the Council[1]; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.[2]

2 *bis.*[3] *The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent Members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.*

3. The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

4. The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

5. Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a Member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

6. At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

ARTICLE V.—1. Except where otherwise expressly provided in this Covenant, or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

2. All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

3. The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

ARTICLE VI.—1. The permanent Secretariat shall be established at the seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

2. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

3. The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

4. The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

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[1] In virtue of this paragraph of the Covenant, Germany was nominated as a permanent Member of the Council on September 8, 1926.

[2] The number of Members of the Council selected by the Assembly was increased to six instead of four by virtue of a resolution adopted by the Third Assembly on September 25, 1922. By a resolution taken by the Assembly on September 8, 1926, the number of Members of the Council selected by the Assembly was increased to nine.

[3] This Amendment came into force on July 29, 1926, in accordance with Article XXVI. of the Covenant.

5.[1] *The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.*

ARTICLE VII.—1. The seat of the League is established at Geneva.

2. The Council may at any time decide that the seat of the League shall be established elsewhere.

3. All positions under or in connexion with the League, including the Secretariat, shall be open equally to men and women.

4. Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

5. The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

ARTICLE VIII.—1. The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

2. The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

3. Such plans shall be subject to reconsideration and revision at least every ten years.

4. After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

5. The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

6. The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to warlike purposes.

ARTICLE IX.—A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles I. and VIII. and on military, naval and air questions generally.

ARTICLE X.—The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE XI.—1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the

[1] This Amendment came into force on August 13, 1924, in accordance with Article XXVI. of the Covenant, and replaces the following paragraph:

"The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union."

request of any Member of the League forthwith summon a meeting of the Council.

2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE XII.[1]—1. The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration *or judicial settlement* or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision* or the report by the Council.

2. In any case under this Article the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

ARTICLE XIII.[1]—1. The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration *or judicial settlement*, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement.*

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement.*

3. *For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with*

[1] The Amendments printed in italics relating to these Articles came into force on September 26, 1924, in accordance with Article XXVI. of the Covenant and replace the following texts:

ARTICLE XII.—" The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

" In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute."

ARTICLE XIII.—" The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

" Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

" For the consideration of any such dispute, the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

" The Members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

Article XIV., or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

4. The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision*, the Council shall propose what steps should be taken to give effect thereto.

ARTICLE XIV.—The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

ARTICLE XV.—1.[1] If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration *or judicial settlement* in accordance with Article XIII., the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

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[1] The Amendment to the first paragraph of this Article came into force on September 26, 1924, in accordance with Article XXVI. of the Covenant, and replaces the following text:

ARTICLE XV.—" If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article XIII., the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof."

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute provided that such request be made within fourteen days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this Article and of Article XII. relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

ARTICLE XVI.—1. Should any Member of the League resort to war in disregard of its covenants under Articles XII., XIII. or XV., it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

ARTICLE XVII.—1. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles XII. to XVI. inclusive shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article XVI. shall be applicable as against the State taking such action.

4. If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

ARTICLE XVIII.—Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

ARTICLE XIX.—The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

ARTICLE XX.—1. The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

2. In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

ARTICLE XXI.—Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace.

ARTICLE XXII.—1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that

the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

ARTICLE XXIII.—Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connexion, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(*f*) will endeavour to take steps in matters of international concern for the prevention and control of disease.

ARTICLE XXIV.—1. There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

2. In all matters of international interest which are regulated by general

conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

ARTICLE XXV.—The Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

ARTICLE XXVI.—1. Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

2. No such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

ANNEX TO THE COVENANT

I. *Original Members of the League of Nations, Signatories of the Treaty of Peace*

United States of America
Belgium
Bolivia
Brazil
British Empire
Canada
Australia
South Africa
New Zealand
India
China
Cuba
Ecuador
France
Greece
Guatemala
Haiti
Hedjaz
Honduras
Italy
Japan
Liberia
Nicaragua
Panama
Peru
Poland
Portugal
Roumania
Serb-Croat-Slovene State
Siam
Czechoslovakia
Uruguay

States invited to accede to the Covenant

Argentine Republic
Chile
Colombia
Denmark
Netherlands
Norway
Paraguay
Persia
Salvador
Spain
Sweden
Switzerland
Venezuela

II. *First Secretary-General of the League of Nations*

The Hon. Sir JAMES ERIC DRUMMOND, K.C.M.G., C.B.

ANNEX B

PART XIII. (LABOUR) OF THE TREATY OF VERSAILLES OF JUNE 28, 1919[1]

SECTION I.—ORGANIZATION OF LABOUR

WHEREAS the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

THE HIGH CONTRACTING PARTIES, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following:

CHAPTER I.—ORGANIZATION

ARTICLE 387.—1. A permanent organization is hereby established for the promotion of the objects set forth in the Preamble.

2. The original Members of the League of Nations shall be the original Members of this organization, and hereafter membership of the League of Nations shall carry with it membership of the said organization.

ARTICLE 388.—The permanent organization shall consist of:

1. A General Conference of Representatives of the Members and

2. An International Labour Office controlled by the Governing Body described in Article 393.

ARTICLE 389.—1. The Meetings of the General Conference of Representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four Representatives of each of the Members, of whom two shall be Government Delegates and the two others shall be Delegates representing respectively the employers and the workpeople of each of the Members.

[1] The provisions of Part XIII. of the Treaty of Versailles are reproduced in full in Part XIII. of the Treaty of Saint-Germain of September 10, 1919 (Articles 332-372), Part XIII. of the Treaty of Trianon of June 4, 1920 (Articles 315-355) and Part XII. of the Treaty of Neuilly of November 27, 1919 (Articles 249-289).

2. Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.

3. The Members undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

4. Advisers shall not speak except on a request made by the Delegate whom they accompany and by the special authorization of the President of the Conference, and may not vote.

5. A Delegate may by notice in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

6. The names of the Delegates and their advisers will be communicated to the International Labour Office by the Government of each of the Members.

7. The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with this article.

ARTICLE 390.—1. Every Delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

2. If one of the Members fails to nominate one of the non-Government Delegates whom it is entitled to nominate, the other non-Government Delegate shall be allowed to sit and speak at the Conference, but not to vote.

3. If in accordance with Article 389 the Conference refuses admission to a Delegate of one of the Members, the provisions of the present Article shall apply as if that Delegate had not been nominated.

ARTICLE 391.—The meetings of the Conference shall be held at the seat of the League of Nations, or at such other place as may be decided by the Conference at a previous meeting by two-thirds of the votes cast by the Delegates present.

ARTICLE 392.—The International Labour Office shall be established at the seat of the League of Nations as part of the organization of the League.

ARTICLE 393.[1]—1. The International Labour Office shall be under the

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[1] At its Nineteenth Sitting, held on November 2, 1922, the Fourth Session of the International Labour Conference adopted by 82 votes to 2, with 6 abstentions, the following draft amendment to Article 393, which is at present before the States Members of the International Labour Organization, in accordance with the provisions of Article 422 of the Treaty of Versailles:

"*The International Labour Office shall be under the control of a Governing Body consisting of thirty-two persons:*

Sixteen representing Governments,
Eight representing the Employers, and
Eight representing the Workers.

Of the sixteen persons representing Governments, eight shall be appointed by the Members of chief industrial importance, and eight shall be appointed by the Members selected for that purpose by the Government Delegates to the Conference excluding the Delegates of the eight Members mentioned above. Of the sixteen Members represented six shall be non-European States.

Any question as to which are the Members of chief industrial importance shall be decided by the Council of the League of Nations.

The persons representing the Employers and the persons representing the Workers shall be elected respectively by the Employers' Delegates and the Workers' Delegates to the

control of a Governing Body consisting of twenty-four persons, appointed in accordance with the following provisions:

2. The Governing Body of the International Labour Office shall be constituted as follows:

Twelve persons representing the Governments;

Six persons elected by the Delegates to the Conference representing the employers;

Six persons elected by the Delegates to the Conference representing the workers.

3. Of the twelve persons representing the Governments eight shall be nominated by the Members which are of the chief industrial importance, and four shall be nominated by the Members selected for the purpose by the Government Delegates to the Conference, excluding the Delegates of the eight Members mentioned above.

4. Any question as to which are the Members of the chief industrial importance shall be decided by the Council of the League of Nations.

5. The period of office of the members of the Governing Body will be three years. The method of filling vacancies and other similar questions may be determined by the Governing Body subject to the approval of the Conference.

6. The Governing Body shall, from time to time, elect one of its members to act as its Chairman, shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least ten members of the Governing Body.

ARTICLE 394.—1. There shall be a Director of the International Labour Office, who shall be appointed by the Governing Body, and, subject to the instructions of the Governing Body, shall be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

2. The Director or his deputy shall attend all meetings of the Governing Body.

ARTICLE 395.—The staff of the International Labour Office shall be appointed by the Director, who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities. A certain number of these persons shall be women.

ARTICLE 396.—1. The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

2. It will prepare the agenda for the meetings of the Conference.

3. It will carry out the duties required of it by the provisions of this Part of the present Treaty in connexion with international disputes.

Conference. Two Employers' representatives and two Workers' representatives shall belong to non-European States.

The period of office of the Governing Body shall be three years.

The method of filling vacancies and of appointing substitutes and other similar questions may be decided by the Governing Body subject to the approval of the Conference.

The Governing Body shall, from time to time, elect one of its number to act as its Chairman, shall regulate its own procedure, and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least twelve of the representatives on the Governing Body."

4. It will edit and publish in French and English, and in such other languages as the Governing Body may think desirable, a periodical paper dealing with problems of industry and employment of international interest.

5. Generally, in addition to the functions set out in this article, it shall have such other powers and duties as may be assigned to it by the Conference.

ARTICLE 397.—The Government Departments of any of the Members which deal with questions of industry and employment may communicate directly with the Director through the Representative of their Government on the Governing Body of the International Labour Office or, failing any such Representative, through such other qualified official as the Government may nominate for the purpose.

ARTICLE 398.—The International Labour Office shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it can be given.

ARTICLE 399.—1. Each of the Members will pay the travelling and subsistence expenses of its Delegates and their advisers and of its Representatives attending the meetings of the Conference or Governing Body, as the case may be.

2. All the other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary-General of the League of Nations out of the general funds of the League.

3. The Director shall be responsible to the Secretary-General of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

CHAPTER II.—PROCEDURE

ARTICLE 400.—The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the Members or by any representative organization recognized for the purpose of Article 389.

ARTICLE 401.—The Director shall act as the Secretary of the Conference, and shall transmit the agenda so as to reach the Members four months before the meeting of the Conference, and, through them, the non-Government Delegates when appointed.

ARTICLE 402.—1. Any of the Governments of the Members may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all the Members of the Permanent Organization.

2. Items to which such objection has been made shall not, however, be excluded from the agenda if at the Conference a majority of two-thirds of the votes cast by the Delegates present is in favour of considering them.

3. If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the Delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

ARTICLE 403.—1. The Conference shall regulate its own procedure, shall elect its own President, and may appoint committees to consider and report on any matter.

2. Except as otherwise expressly provided in this Part of the present Treaty,

all matters shall be decided by a simple majority of the votes cast by the Delegates present.

3. The voting is void unless the total number of votes cast is equal to half the number of the Delegates attending the Conference.

ARTICLE 404.—The Conference may add to any committees which it appoints technical experts, who shall be assessors without power to vote.

ARTICLE 405.—1. When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (*a*) of a recommendation to be submitted to the Members for consideration with a view to effect being given to it by national legislation or otherwise, or (*b*) of a draft international convention for ratification by the Members.

2. In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

3. In framing any recommendation or draft convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances, make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

4. A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director, and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention to each of the Members.

5. Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

6. In the case of a recommendation, the Members will inform the Secretary-General of the action taken.

7. In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

8. If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member.

9. In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case.

10. The above Article shall be interpreted in accordance with the following principle:

11. In no case shall any Member be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to lessen the protection afforded by its existing legislation to the workers concerned.

ARTICLE 406.—Any convention so ratified shall be registered by the Secretary-General of the League of Nations, but shall only be binding upon the Members which ratify it.

ARTICLE 407.—1. If any convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the Delegates present, it shall nevertheless be within the right of any of the Members of the Permanent Organization to agree to such convention among themselves.

2. Any convention so agreed to shall be communicated by the Governments concerned to the Secretary-General of the League of Nations, who shall register it.

ARTICLE 408.—Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. The Director shall lay a summary of these reports before the next meeting of the Conference.

ARTICLE 409.—In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the Government against which it is made, and may invite that Government to make such statement on the subject as it may think fit.

ARTICLE 410.—If no statement is received within a reasonable time from the Government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

ARTICLE 411.—1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the Government in question in the manner described in Article 409.

3. If the Governing Body does not think it necessary to communicate the complaint to the Government in question, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may apply for the appointment of a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a Delegate to the Conference.

5. When any matter arising out of Articles 410 or 411 is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government in question.

ARTICLE 412.—1. The Commission of Inquiry shall be constituted in accordance with the following provisions:

2. Each of the Members agrees to nominate within six months of the date on which the present Treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the members of the Commission of Inquiry shall be drawn.

3. The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination of any person whose qualifications do not in its opinion comply with the requirements of the present Article.

4. Upon the application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Inquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any Member directly concerned in the complaint.

ARTICLE 413.—The Members agree that, in the event of the reference of a complaint to a Commission of Inquiry under Article 411, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

ARTICLE 414.—1. When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

2. It shall also indicate in this report the measures, if any, of an economic character against a defaulting Government which it considers to be appropriate and which it considers other Governments would be justified in adopting.

ARTICLE 415.—1. The Secretary-General of the League of Nations shall communicate the report of the Commission of Inquiry to each of the Governments concerned in the complaint, and shall cause it to be published.

2. Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

ARTICLE 416.—In the event of any Member failing to take the action required by Article 405, with regard to a recommendation or draft convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice.

ARTICLE 417.—The decision of the Permanent Court of International Justice in regard to a complaint or matter which has been referred to it in pursuance of Article 415 or Article 416 shall be final.

ARTICLE 418.—The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry, if any, and shall in its decision indicate the measures, if any, of an economic character which it considers to be appropriate, and which other Governments would be justified in adopting against a defaulting Government.

ARTICLE 419.—In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other Member may take against that Member the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case.

ARTICLE 420.—The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry or with those in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Inquiry to verify its contention. In this case the provisions of Articles 412, 413, 414, 415, 417 and 418 shall apply and if the report of the Commission of Inquiry or the decision of the Permanent Court of International Justice is in favour of the defaulting Government, the other Governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting Government.

CHAPTER III.—GENERAL

ARTICLE 421.—1. The Members engage to apply conventions which they have ratified in accordance with the provisions of this Part of the present Treaty to their colonies, protectorates and possessions which are not fully self-governing:

(1) Except where owing to the local conditions the convention is inapplicable, or

(2) Subject to such modifications as may be necessary to adapt the convention to local conditions.

2. And each of the Members shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing.

ARTICLE 422.—Amendments to this Part of the present Treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present shall take effect when ratified by the States whose representatives compose the Council of the League of Nations and by three-fourths of the Members.

ARTICLE 423.—Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice.

CHAPTER IV.—TRANSITORY PROVISIONS

ARTICLE 424.—1. The first meeting of the Conference shall take place in October, 1919. The place and agenda for this meeting shall be as specified in the Annex hereto.

2. Arrangements for the convening and the organization of the first meeting of the Conference will be made by the Government designated for the purpose in the said Annex. That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said Annex.

3. The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other

than the expenses of Delegates and their advisers, will be borne by the Members in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

ARTICLE 425.—Until the League of Nations has been constituted all communications which under the provisions of the foregoing Articles should be addressed to the Secretary-General of the League will be preserved by the Director of the International Labour Office, who will transmit them to the Secretary-General of the League.

ARTICLE 426.—Pending the creation of a Permanent Court of International Justice, disputes which in accordance with this Part of the present Treaty would be submitted to it for decision will be referred to a tribunal of three persons appointed by the Council of the League of Nations.

ANNEX

FIRST MEETING OF ANNUAL LABOUR CONFERENCE, 1919

1. The place of meeting will be Washington.

2. The Government of the United States of America is requested to convene the Conference.

3. The International Organizing Committee will consist of seven members, appointed by the United States of America, Great Britain, France, Italy, Japan, Belgium and Switzerland. The Committee may, if it thinks necessary, invite other Members to appoint representatives.

4. Agenda:

(1) Application of principle of the 8-hours day or of the 48-hours week.

(2) Question of preventing or providing against unemployment.

(3) Women's employment:

(*a*) Before and after child-birth, including the question of maternity benefit;

(*b*) During the night;

(*c*) In unhealthy processes.

(4) Employment of children:

(*a*) Minimum age of employment;

(*b*) During the night;

(*c*) In unhealthy processes.

(5) Extension and application of the International Conventions adopted at Berne in 1906 on the prohibition of night work for women employed in industry and the prohibition of the use of white phosphorus in the manufacture of matches.

SECTION II.—GENERAL PRINCIPLES

ARTICLE 427.—The High Contracting Parties, recognizing that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I., and associated with that of the League of Nations.

They recognize that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial

communities should endeavour to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:

First.—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

Second.—The right of association for all lawful purposes by the employed as well as by the employers.

Third.—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth.—The adoption of an eight-hours day or a forty-eight-hours week as the standard to be aimed at where it has not already been attained.

Fifth.—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

Sixth.—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

Seventh.—The principle that men and women should receive equal remuneration for work of equal value.

Eighth.—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth.—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are Members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world.

ANNEX C

THE STATUTE FOR THE PERMANENT COURT OF INTERNATIONAL JUSTICE

Provided for by Article XIV. of the Covenant of the League of Nations

ARTICLE 1.—A Permanent Court of International Justice is hereby established, in accordance with Article XIV. of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

CHAPTER I.—ORGANIZATION OF THE COURT

ARTICLE 2.—The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

ARTICLE 3.—The Court shall consist of fifteen members: eleven judges and four deputy judges. The number of judges and deputy judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy judges.

ARTICLE 4.—The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

ARTICLE 5.—At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the Members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

ARTICLE 6.—Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

ARTICLE 7.—The Secretary-General of the League of Nations shall prepare

a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the Assembly and to the Council.

ARTICLE 8.—The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy judges.

ARTICLE 9.—At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

ARTICLE 10.—Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

ARTICLE 11.—If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

ARTICLE 12.—If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

ARTICLE 13.—The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

ARTICLE 14.—Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.

ARTICLE 15.—Deputy judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court and shall have regard firstly to priority of election and secondly to age.

ARTICLE 16.—The ordinary members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

ARTICLE 17.—No member of the Court can act as agent, counsel or advocate

in any case of an international nature. This provision only applies to the deputy judges as regards cases in which they are called upon to exercise their functions on the Court.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a Member of a national or international Court, or of a commission of inquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

ARTICLE 18.—A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of the League of Nations, by the Registrar.

This notification makes the place vacant.

ARTICLE 19.—The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

ARTICLE 20.—Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

ARTICLE 21.—The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.

ARTICLE 22.—The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.

ARTICLE 23.—A session of the Court shall be held every year.

Unless otherwise provided by rules of Court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.

ARTICLE 24.—If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

ARTICLE 25.—The full Court shall sit except when it is expressly provided otherwise.

If eleven judges cannot be present, the number shall be made up by calling on deputy judges to sit.

If, however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.

ARTICLE 26.—Labour cases, particularly cases referred to in Part XIII. (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In

addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

In Labour cases the International Labour Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

ARTICLE 27.—Cases relating to transit and communications, particularly cases referred to in Part XII. (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications cases" composed of two persons nominated by each Member of the League of Nations.

ARTICLE 28.—The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

ARTICLE 29.—With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

ARTICLE 30.—The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

ARTICLE 31.—Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

ARTICLE 32.—The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-President, judges and deputy judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

ARTICLE 33.—The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

CHAPTER II.—COMPETENCE OF THE COURT

ARTICLE 34.—Only States or Members of the League of Nations can be parties in cases before the Court.

ARTICLE 35.—The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court.

ARTICLE 36.—The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) The interpretation of a treaty;

(*b*) Any question of International Law;

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

ARTICLE 37.—When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

ARTICLE 38.—The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognized by civilized nations;
4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex æquo et bono*, if the parties agree thereto.

CHAPTER III.—PROCEDURE

ARTICLE 39.—The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of the parties, authorize a language other than French or English to be used.

ARTICLE 40.—Cases are brought before the Court, as the case may be, either by the notification of the special agreement, or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

ARTICLE 41.—The Court shall have the power to indicate, if it considers

that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

ARTICLE 42.—The parties shall be represented by Agents.

They may have the assistance of Counsel or Advocates before the Court.

ARTICLE 43.—The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

ARTICLE 44.—For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

ARTICLE 45.—The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

ARTICLE 46.—The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

ARTICLE 47.—Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

ARTICLE 48.—The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

ARTICLE 49.—The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

ARTICLE 50.—The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an inquiry or giving an expert opinion.

ARTICLE 51.—During the hearing, any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

ARTICLE 52.—After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

ARTICLE 53.—Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favour of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

ARTICLE 54.—When, subject to the control of the Court, the agents,

advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

ARTICLE 55.—All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

ARTICLE 56.—The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

ARTICLE 57.—If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

ARTICLE 58.—The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

ARTICLE 59.—The decision of the Court has no binding force except between the parties and in respect of that particular case.

ARTICLE 60.—The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

ARTICLE 61.—An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

ARTICLE 62.—Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

ARTICLE 63.—Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

ARTICLE 64.—Unless otherwise decided by the Court, each party shall bear its own costs.

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